SUPREME COURT, U. S.

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Supreme Court of the United States

October Term, 1969

No. 1374

MARTIN A. BEATTY,

Petitioner,

vs.

RANDOLPH K. ELLINGS, CITY OF WINONA, HOUSING AND REDEVELOPMENT AUTHORITY OF WINONA, GEORGE M. ROBERTSON, JR., JAMES BRONK, MARLOWE BROWN, JAMES McCABE, HAROLD BRIESATH, DANIEL BAMBENEK, HENRY V. PARKS, MURIEL OLLOM, JIM D. MOHAN, HAROLD THIEWES, JAMES V. STOLTMAN, NEIL SAWYER, BARRY NELSON, DAVID L. JOHNSTON, DONALD KLAGGE, JERRY BORZYSKOWSKI, ALLYN S. MORGAN, JR., L. W. GOLDBERG, N. J. FISCHER, JOSEPH E. KRIER, WM. J. THUROW, FRANK CUNNINGHAM, WM. O. FINKELNBURG, E. J. SIEVERS, PHILIP BAUMANN, JAMES T. SCHAIN, NORMAN E. INDALL, WM. F. WHITE, JAMES FOSTER, JERRY PAPENFUSS, FRANK G. MERTES, DONALD GRAY, HOWARD KELLER, REPUBLICAN HERALD PUBLISHING COMPANY, JAMES B. GOETZ, RADIO STATION KAGE, GEM RADIO STATIONS CO., JAMES B. GOETZ, MERLIN J. MEYTHALER and REX N. EYLER, co-partners, doing business as WINONA BROADCASTING CO., KWNO BROADCASTING CO., CHAMBER OF COMMERCE OF WINONA, DONALD STONE, and ARNOLD STOA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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To the Justices of the Supreme Court of the United States:

This is a petition by Martin A. Beatty for a writ of certiorari to review a judgment of the Supreme Court of Minnesota entered in the above action on January 5, 1970.

CITATION OF THE OPINION BELOW

The above entitled cause is not yet officially reported. It is unofficially reported in 173 N.W.2d 12.

JURISDICTIONAL STATEMENT

The Judgment sought to be reviewed was dated and entered in the office of the Clerk of the Supreme Court of Minnesota on January 5, 1970. It is reprinted in attached Appendix (A. 1). A certified copy of such judgment was duly filed in the District Court of Winona County and Third Judicial District of Minnesota on January 7, 1970.

Earlier, upon appellant's Application for Reargument, an order of the Supreme Court of Minnesota was made and filed on November 7, 1969, staying further proceedings pending its determination.

U.S.C.A. Sec. 1257(3) is the statutory provision believed to confer jurisdiction on this Court.

QUESTIONS PRESENTED

(1) Does the local citizen have a constitutional right to attend all of the meetings of the local public bodies when the public business is discussed?

(2) Does the local citizen have a constitutional right to see and read the letters, papers and documents of the local public bodies?

(3) Where a citizen, resident, taxpayer who is neither a public official nor a candidate for public office speaks out only at the meetings of the public bodies in opposition to a public program fostered by the public bodies, but only when permitted to do so, and all the while conducting himself in a lawful, decorous and proper manner; who belongs to no sponsoring organization; who neither solicits nor receives financial support; and who does not have access to newspapers,

radio or television and has not contributed statements to the local news media—

Is such person a "public figure" within the rule of *New York Times Co. v. Sullivan*, even though he has:

a. Pointed out by letter to local, state and national officials deficiencies, etc., in the program.

b. Upon very infrequent occasions alerted the news media by letter concerning the response of public officials to such opposition.

c. Sent a copy of only one of his letters to City Council members to the entire local membership of defendant Chamber of Commerce, therein describing how its officers had interfered with him when he sought to attend a meeting of all of the Council members and of all of the WHRA members held at the Chamber Building.

d. Sent one letter to the Board Chairman of the private bank where WHRA meetings were held as a memo of a conversation about an alleged slander of plaintiff thereat?

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. Constitution, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of

War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. Constitution, Amendment IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U. S. Constitution, Amendment X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U. S. Constitution, Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is an action to recover damages arising out of a conspiracy to interfere with plaintiff's civil rights and to defame him. The claim includes $2,000 of alleged special damages.

The complaint alleges a conspiracy by city officials and others to interfere with, circumscribe and limit, and deny to plaintiff certain rights and privileges and to ruin his

reputation as an attorney and citizen by public vilification; and to thereby render nugatory plaintiff's lawful exercise of his citizen's rights, including the right to lawfully oppose urban renewal and to defend against any unlawful taking of his realty and his right to own realty.

The defendants include city officials who were, or had been, members of three public bodies, namely: the Planning Commission, the City Council and the Housing and Redevelopment Authority, abbreviated as WHRA. The City of Winona and WHRA are defendant municipal corporations. The Mayor, City Attorney, Police Chief and two policemen are also named defendants, along with the three local news media and their respective publishers, and the corporate Chamber of Commerce of Winona, hereinafter referred to as Chamber of Commerce, Donald Stone, its Executive Secretary, and its (former) President, Arnold Stoa.

The complaint alleges that all defendants participated in the conspiracy, but specific torts were also committed in the course of the execution of the conspiratorial plan. Public slanders are alleged as follows: by WHRA member Krier in pars. 16 and 21; by Mayor Ellings in par. 20; by Alderman Mohan in par. 22; by Planning Commissioner Papenfuss in par. 23. A libel by Chairman Finkelnburg and the members of WHRA and the three news media is alleged in par. 17 and a separate libel published in Winona Daily News is alleged in par. 18. A false arrest and imprisonment involving Police Chief McCabe, two policemen and five aldermen is alleged in par. 19. Each of those torts could be maintained as independent suits; and each violation of a civil right is a tort.

The action was brought in the state District Court of Winona County and Third Judicial District of Minnesota.

Plaintiff's evidence shows generally that starting in 1963 he sought to keep informed about and to lawfully oppose

federally-assisted urban renewal in Winona where he owns a building housing his office located in the General Neighborhood Renewal Plan area.

In 1963 the Council held meetings on the 1st and 3rd Mondays of each month commencing at 7:30 P.M. in the large hall of the Municipal Building which otherwise served as and was called the Courtroom of the Municipal Court. Such meetings were conducted in a formal manner and minutes were kept. The defendants contend that no ordinances can be enacted at meetings not so constituted. Except as to a recess feature of such meetings, the citizens were free to attend and frequently did so. Such meetings will be referred to herein as "regular meetings."

Other meetings of council members were held on the off Monday[1] evenings, on other days of the week, and at varying times of the day. Such meetings were variously referred to as "committee of the whole meetings" or "committee meetings" or "special meetings" or "adjourned meetings." For clarity all except "regular meetings" will be herein referred to as "irregular meetings."

By either designation the reference is to a meeting where a quorum or more of the council members are in attendance. At such meetings their activity includes, at the very least, a discussion of the public's business.

The irregular meetings were usually held in a separate room in the Municipal Building where the council members sat around a table. The room was of a size adequate to accommodate the members but much smaller than the Municipal Court room. These rooms are hereafter referred to as the "Courtroom" and the "small room."

---

[1]The practice was not entirely uniform, because sometimes regular meetings were held on the 2nd, 4th or 5th Mondays, in the Courtroom in a formal manner, as adjourned meetings or extra meetings.

Irregular meetings were also held in the small room before the regular meetings, starting at such various times as 6:00 P.M., 6:30 P.M. and 7:00 P.M.

In 1963 at the regular meetings the Council customarily attended to some business in the Courtroom and then recessed to the small room where discussions of the public's business continued for indefinite periods of time.

This custom of meeting during recess will be herein included in the designation "irregular meeting," and it will be separately characterized as "irregular recess meeting." After the irregular recess meeting the practice was that the Council returned to the Courtroom, continued with the handling of the public's business, sometimes passed ordinances and/or resolutions, and in due course concluded the business. All of the irregular meetings appear to be covered by the term "Executive Session" found in case law discussions. (See: *Blum v. Board of Zoning and Appeals*, 1 Misc. ed. 668, 149 N.Y.S.2d 5 at p. 8.)

Beginning in about early 1964 plaintiff began a sustained effort to attend the irregular recess meetings. Some time later plaintiff, at first by accident, and thereafter by purposeful search, learned from time to time of other irregular meetings. He then endeavored to attend them also.

During that time members of the general public were not admitted but selected individuals were admitted from time to time to discuss specific matters with the council. Members of the news media were in attendance at many of the irregular meetings.

Plaintiff's efforts to attend irregular meetings of the Council met with continued interferences and harassments, some of which were the following, to-wit: (1) being barred, (2) holding unannounced "special" meetings, (3) closed door meetings, (4) told "You cannot come in," (5) crowding plaintiff out, (6) pushing plaintiff out, (7) plaintiff's in-

quiries to determine meeting times were unsuccessful, (8) ordered out of meeting, (9) abortive attempt to intimidate plaintiff to leave meeting by summoning policemen, (10) Council tried to condition plaintiff's attendance at irregular meetings on condition that plaintiff "would not divulge anything that was said," (11) attempted intimidation by interrogation by policemen on orders from police headquarters, (12) vilified at Council meetings by being falsely characterized as (a) a "liar" by the Mayor, (b) one who is "interfering with our work" by a councilwoman, (c) "a trouble maker" by some members of the Council, (13) holding unannounced irregular meetings at Chamber of Commerce Building, (14) attempt to condition plaintiff's attendance at irregular meeting on condition that he agree that the meeting was in fact a Chamber of Commerce Parking Committee meeting, (15) falsely arrested and imprisoned by being carried bodily from an irregular meeting without cause or provocation and prevented from re-entering during meeting, (16) privately impliedly threatened by City Attorney, (17) challenged to alley fight by Mayor, (18) by the action of Council president who admittedly tried to keep plaintiff from attendance at meetings of a Council quorum from 9/8/64 to 4/12/65, (19) by meeting secretly at the Chamber of Commerce Building on 9/9/64 to conduct the public business intended to but not conducted because of plaintiff's attendance at meeting at City Hall on 9/8/64.

Plaintiff's efforts to attend WHRA meetings met with interference and harassments such as: (1) being asked at a WHRA meeting by WHRA member Joseph E. Krier, "What are you doing here? Why aren't you at your office?", "Does your wife put you up to this?", "I think you ought to see a psychiatrist." (2) by meeting in a room in a private bank so small that plaintiff citizen was able to attend only by sitting in the next room.

Plaintiff was also denied and not furnished certain public information by the three public bodies on several occasions, although none of such requested information concerned any military or diplomatic secrets.

Some, but not all, of the public information denied to plaintiff after his request therefor are these, to-wit: (1) an urban renewal map, (2) the educational qualifications of City Planner Wolfgang Roeseler, (3) knowledge of a planning grant during the period from 9/3/63 to 10/28/63, (4) the times, and sometimes the places, of a good many meetings of full quorums of public bodies, although requested in writing, (5) denied by WHRA on 6/15/65 permission to see a marketability study, (6) denied by WHRA on 5/9/66 permission to see the "confidential" marketability study report prepared by Larry Smith Co.

Plaintiff has spoken at meetings of the public bodies about urban renewal and about secret meetings only when recognized to do so.

Respondents, hereinafter referred to as defendants, have not claimed that plaintiff headed or was ever associated with any group or association organized or existing for the purpose of opposing federally-assisted urban renewal, or for the purpose of opposing secret meetings of the public bodies, and the record contains no evidence of any such group or groups. Defendants have not claimed that plaintiff solicited any funds or was provided any funds to support his efforts; and the evidence is that such was not the case. Excepting his statements at the meetings of the official public bodies, the defendants have not claimed that plaintiff participated in any form of a publicity campaign to foment opposition to urban renewal and/or secret meetings; and there is nothing in the record that would support such a claim.

On but one occasion did plaintiff appear otherwise than in his private capacity. At the council meeting of 3/14/66

he appeared as "spokeman for four 3rd Street small business proprietors," qualifying his role by "explaining that the views he expressed were not theirs in every instance."

Plaintiff also sought facts about the two issues and pointed to inconsistencies, etc., concerning them in a number of letters to local public officials, and to some state and federal officials. Copies of plaintiff's letter of 11/14/64 to Council members were sent to the large local membership of defendant Chamber of Commerce. This letter protested "the unbelievable difficulties which I (plaintiff) as a citizen continue to encounter in simply trying to exercise my constitutional and statutory civil right to attend meetings of official public bodies." The letter recited some of the frustrations, interferences and harassments in relation to earlier meetings, and includes a detailed account of the difficulties plaintiff encountered in his ultimately successful attempt to attend a combined meeting of all members of the City Council, and all members of WHRA at the defendant Chamber of Commerce of Winona's building on 11/9/64.

During the period from mid-1963 through August, 1966, although he frequently wrote directly to public officials, his other correspondence about urban renewal and secret meetings was slight. It consisted entirely of the following:

—To Winona Daily News five letters noting misquotations of plaintiff, and a letter calling the newspaper's attention to an unreported secret meeting, "although known to the press."

—To defendant Radio Station KAGE of Winona on 3/25/66 and to its affiliate, defendants James B. Goetz, et al., d/b/a Winona Broadcasting Co., on 3/30/66, correcting a probable misquotation of plaintiff.

—To Minneapolis Tribune on 6/17/64 enclosing a copy of plaintiff's letter of 6/17/64 to the State Public Exam-

iner requesting an investigation, for the stated purpose following, to-wit:

> "I am sending this copy to a representative of the press in the hope that the State Public Examiner may be less inclined to disregard it, knowing that the press has been alerted";

and also a copy of plaintiff's second letter to the State Public Examiner dated 6/29/64, which included this cautionary reminder, to-wit:

> "This communication is not intended as a so-called 'Letter to the Editor'."

—Letters on 12/3/64 and 12/10/64 to Pat McCarty, Reporter, Minneapolis Tribune, commending him upon his article entitled "City Hall Secrecy Said Growing," the first letter expressly stating:

> "My letter is not submitted as a 'Public Pulse' or 'Letter to the Editor'."

Also copies of three of plaintiff's letters to public bodies were sent to Winona Daily News, and local radio stations KAGE and KWNO; and plaintiff sent copies of his letter to the Council of 5/1/65 about academic freedom, a subject irrelevant to this suit, to University of Minnesota Daily and three other non-local newspapers. A copy of *one other letter* was also sent to the University of Minnesota Daily.

Once plaintiff wrote the Board Chairman of Winona National and Savings Bank concerning a slander allegedly spoken by the Vice Chairman of WHRA at a public meeting of WHRA in such private bank.

The plaintiff was not a public official, nor a candidate for office.

Following are the facts about some of the irregular meetings:

Despite the fact that plaintiff had asked the Council that he and the other members of the public be advised of all of the Council meetings, in advance thereof, seven of the nine Council members attended a meeting at the Chamber of Commerce on 11/4/64, kept secret from the public, at which they agreed to authorize an engineering study of off-street parking, being a subject interrelated with urban renewal. The Council held a secret meeting at the Chamber of Commerce Building on or about September 9, 1964 with W. E. Morse, Executive Director of Winona Industrial Development Assn. after an unannounced 7:00 P.M. meeting of Council members with Mr. W. E. Morse at City Hall on 9/8/64 was aborted when plaintiff citizen declined to leave.

The Council members met at the Chamber of Commerce building on another occasion before 11/9/64, and the Planning Commissioners had similarly met there. Plaintiff was denied permission by the Chamber of Commerce to attend two of such meetings, and he did not attend them.

A meeting of Council members and the Chamber of Commerce in the Chamber's conference room at the Chamber of Commerce building which had been arranged for 9/24/64 without public knowledge, was cancelled when plaintiff citizen learned of it. The fact that such meeting had been arranged was falsely denied by Councilman Sawyer.

A meeting of the entire Council and WHRA memberships and the Executive Secretary and some members of the Chamber of Commerce was held at the Chamber of Commerce building on 11/9/64 with WHRA's Vice Chairman, defendant Joseph E. Krier presiding. Plaintiff tried from about 1:40 P.M. to determine if a meeting of the Council members or WHRA members was to be held that evening, but by 5:00 P.M. he had not found out. Efforts were made to prevent plaintiff's attendance. Defendant Stoa, President of the

Chamber of Commerce, told plaintiff that he would "not be admitted" to the Chamber of Commerce building.

Parking problems relevant to urban renewal were discussed, and the members of WHRA instructed their Executive Secretary to phone Chicago to determine if non-cash credits could be produced by the city expending funds on parking projects.

It is established, with but one exception, that the alleged conspiratorial slanders by the public officials were all publicly stated at the meetings of the public bodies. An instance not previously cited occurred at a Planning Commission meeting, as follows:

> Planning Commissioner Papenfuss—"You god damn son of a bitch, you little son of a bitch, you son of a bitch, I ought to throw you out the window."

During the period from 9/8/64 to 4/12/65 Council President Briesath admittedly tried to prevent plaintiff's attendance at all but formal Monday evening Council meetings at 7:30 P.M.

Plaintiff was attending a meeting of the Council in the Small Room in City Hall on Monday, 4/12/65. His conduct was lawful, decorous and proper. He was carried bodily from the room by two police officers and imprisoned without cause or provocation after he was ordered to leave by Council President Briesath, and declined to leave. Plaintiff asked defendant police officers and defendant Chief of Police McCabe of what offense he was accused, but they did not state that plaintiff committed any. Plaintiff was not charged with any offense. President Briesath termed the meeting a caucus meeting.

The complaint in paragraphs 17 and 18 alleges libels as parts of the conspiratorial plan. The libel alleged in par. 18 was published by Winona Daily News.

The libel alleged in par. 17 involved the news media and public officials. Having decided to reply to certain remarks made before the Council on March 14, 1966 by plaintiff, defendant Finkelnburg, Chairman of WHRA, in the afternoon of March 15, 1966 prepared some part of a statement. The statement was typewritten before the WHRA meeting held on that evening. At such meeting Finkelnburg publicly read such statement which was about plaintiff only, mentioning him eleven times.

It was allegedly derogatory. It contained these statements, to-wit:

> "The Winona City Council listened last night as Winona Attorney Martin A. Beatty, a spokesman for four Winona businessmen, spoke on what he feels are defects in the proposed redevelopment plan for the 30-block downtown area of Winona."
>
> "* * * The last part of his speech concerned what I construe to be personal attacks on the character and personal honesty of various public officials, * * *."
>
> "* * * We have always welcomed intelligent * * * criticism and suggestions."
>
> "* * * We do now, * * * welcome intelligent, constructive and well-thought-out suggestions."
>
> "* * * The kind of emotional tirade to which the council was subjected * * *."
>
> "* * * He resorts to what I consider an attempt at character assassination * * *."
>
> "I would like to point out how totally irresponsible some of the statement are * * *."
>
> "The belabored efforts * * * to show * * * that certain individuals expect to obtain an advantage through prior knowledge by recent purchases of land abutting Huff Street, between 5th and Broadway, is ridiculous."
>
> "I think the time has now passed when we need devote any further time to irresponsible, inconsistent at-

tacks on the plan or upon the character and honesty of public officials * * *."

"Character assassination is the last resort of persons so governed by prejudice that they cannot or will not use logic and reason. The fact that Mr. Beatty feels it necessary to stoop to this shameful tactic clearly shows his lack of a legitimate or constructive contribution * * *."

Plaintiff's Demand for Retraction was served upon all members of WHRA and the news media defendants, and none retracted.

Chairman Finkelnburg, speaking for himself and the other WHRA members, had earlier on 1-18-66 made a public statement about plaintiff, naming him, at a WHRA meeting.

* * * * * * *

The stage of the proceeding and the manner in which the respective federal questions were raised are as follows.

(1) The issue of the Constitutional right of the local citizen to attend all of the meetings of the local public bodies, when the public business is discussed.

The issue was first raised by plaintiff's complaint, the pertinent allegations of which are these, to-wit:

Par. 10 (paraphrased) * * * That the objectives of such (conspiratorial) "plan" have been, and they are, as follows:

a. To wrongfully and unlawfully interfere with, limit and deny to plaintiff his lawful rights and privileges as a citizen, resident and taxpayer of the City, the State of Minnesota and of the U.S.A. (Emphasis added.)

b. To wrongfully interfere with plaintiff's exercise of his lawful rights by words and acts calculated to intimidate plaintiff;

* * *.

e. And thereby to deny plaintiff lawful government and the benefits thereof and render ineffective and nugatory plaintiff's lawful exercise of his political rights including his right to lawfully oppose urban renewal * * *.

The issue was again raised by propounding legal questions to plaintiff during defendants' pre-trial examination of plaintiff on Discovery Deposition preparatory to defendants' Motions for Summary Judgment of Dismissal. Such questions follow. (The portions of such depositions taken by reporter Paulson being designated by the letter "P," and those taken by reporter Carney being designated by the letter "C," to-wit:)

(C. 130:)

"A. Well, the ultimate fact and conclusion of law from what I looked up is that a citizen has the right to attend meetings of public bodies.

Q. That isn't what we are talking about, we are talking about what is or what is not a public meeting, and you have stated here that any time a quorum is present that that constitutes a meeting and that you are entitled to attend; I want to know what your authority is for that statement.

A. Well, my authority is the *Constitution of the United States of America* and the State of Minnesota, and the particular statute I cited and case law, none of which I have with me at the present time." (Emphasis added.)

* * * * * *

Plaintiff's Deposition (C. 59):

"Q. Is it your position that you had a legal right to attend this particular meeting of the parking committee of (C. 60) the Chamber of Commerce to which members of the council and members of the Housing and Redevelopment Authority were invited?

A. Well, I was attending a meeting of the city council and of WHRA.

Q. My question is: Is it your position that you had a legal right to attend that meeting at that time and place?

A. The meeting of those two bodies, yes."

* * * * *

(C. 61):

"Q. I take it then that it is your position that the members of the Housing and Redevelopment Authority, as well as the members of the city council, when they were invited to attend a parking committee meeting of the Chamber of Commerce, and when they went there, they committed an illegal act, is that right?

A. While they were considering the public's business, yes.

Q. I repeat the other question: Do you have any authority, other than the statute that you refer to?

A. Yes, the Constitution of the United States of America and of the State of Minnesota."

* * * * *

(P. 51, 52):

"Q. All right. Now, then, to hold meetings without proper notice would therefore be your definition rendering it a secret meeting?

A. That would be one way in which a secret meeting could be held, yes, particularly if it was deliberate.

Q. And if it were deliberate it would violate a statute of the Laws of Minnesota in your opinion?

A. I would think so, yes.

Q. And would therefore be illegal? A. Yes."

(P. 55):

"Q. And in that letter you again set out generally your views that various members of the city council and other officers of the city, individually and in consort, had violated your rights as a citizen, had libeled you—

A. Is that the end of the question, Counsel?

Q. Well, it violated your constitutional rights as a citizen and it libeled you, is that right?

A. It is true that I pointed out that my rights as a citizen had been violated." * * *

State District Court Judge Stewart disposed of this alleged denial of a right of a citizen of the U.S.A. in the Order Granting Summary Judgment of Dismissal as follows:

> "(1) That there was no conspiracy among the defendants to deprive the plaintiff of any of his civil rights as a lawyer[2] or citizen * * *.
>
> "(2) That the plaintiff was not deprived by any of the defendants of any of his civil rights as a lawyer[2] or a citizen."

This determination disposed of the claims of denial of his civil rights by the public officials in all areas, in every instance, and each type of civil right claimed by plaintiff. This determination left in the case only three defendant individuals as to three separate alleged slanders.

In his memorandum Judge Stewart set forth his view that the public does not have a right to attend any but the meetings of the public bodies herein characterized as "Regular Meetings" pursuant to the statutory law[3] of Minnesota;[4] and that the statute is probably declaratory of the common law.

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[2]It was not claimed in the pleading or elsewhere that plaintiff was denied any right as a lawyer.

[3]Judge Stewart cited *M.S.A.* 462.441 and *M.S.A.* 471.705.

[4]In his memorandum Judge Stewart stated:

> "The plaintiff claims the defendants conspired to prevent him from appearing at meetings of the Council, the Housing and Redevelopment Authority, and the Planning Commission, and that pursuant to that conspiracy these bodies held meetings which were not public, and denied the plaintiff an opportunity to be present at such meetings.
>
> "In his deposition, and in answer to interrogatories, plaintiff states that he has attended every regular and special meeting of the council for about three years prior to the commencement of this action, * * *."

In so stating, Judge Stewart had reference to the meetings which are in this Petition characterized as "Regular Meetings" of the Council as distinguished from "Irregular Meetings." The plaintiff has at all times contended that the public has a right to attend all meetings at which a quorum is present and the public's business is discussed.

The ambiguity in Judge Stewart's statement initially leaves the incorrect impression that plaintiff in fact attended all "Irregular Meetings" of a quorum as well as "Regular Meetings"; and that there was no evidence that plain-

> "It is clear, therefore, that all meetings of the Council, Planning Board and Housing Commission must be open to the public. Plaintiff claims that this law means that every time a group of councilmen or commissioners, or board members, in number amounting to a quorum congregate, that their meeting shall be open to the public. It is too plain for argument that this is not the meaning of the law. The language refers to regular or special meetings at which official business may be transacted. In fact, the statute is probably declaratory of the common law."

In determining the Motion for Summary Judgment Judge Stewart apparently could not ignore the well documented fact of the Adjourned "Regular Meeting" of WHRA held in secret in Winona National and Savings Bank on 1/14/65. Instead of making a determination that such "Regular Meeting" was contrary to Minnesota and common law, Judge Stewart treated it as a minor exception, stating:

> "Plaintiff does not point to any occasion on which the City Council, Planning Commission, or Housing & Redevelopment Authority held any regular, special or adjourned meeting in private, or ever attempted to transact any official business, except apparently on one occasion the Housing & Redevelopment Authority did, at a time other than a regular meeting, adopt some minor resolution. It, however, was not entered in any minutes, and was again taken up at the next regular meeting of the Authority at which plaintiff was present."

The memorandum lacks any specific comment upon a citizen's rights pursuant to the U. S. Constitution. It contains the general comment that:

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tiff was in fact denied admission to specific "Irregular Meetings," and was required to leave them, or had no advance knowledge of them, etc. The evidence in fact showed a very large number of such "Irregular Meetings," particularly of the Council, which were denied to plaintiff by one device or another.

Such ambiguity is, fortunately, alleviated where Judge Stewart subsequently makes clear that such statement had reference to "regular or special meetings at which official business may be transacted."

> "The public records, the plaintiff's lengthy deposition, and the answers to interrogatories clearly demonstrate that plaintiff was not denied any of his civil rights by any of the defendants. * * *"

However, it is therein further stated:

> "If there were any claim of substance by the plaintiff that he had been denied the right to be present at meetings, the motion on this feature of the case would have to be denied. The plaintiff, under such circumstances, would have a right to cross-examine the defendants, and thus attempt to establish the fact of a conspiracy, but the admitted facts here presented point to only one conclusion, namely, the plaintiff was not in fact deprived of any civil rights."

Plaintiff in his brief to the Minnesota Supreme Court argued as follows:

> "I. The rights and privileges of a citizen of Minnesota include:
>
> 1. a freedom to attend the meetings of municipal bodies when the public business is being discussed;
>
> * * *
>
> with the freedom to exercise and enjoy the same without official abuse or interference."

Plaintiff cited *U. S. Constitution*, Amendments IX and X, and *Thiede v. Town of Scandia Valley*, 217 Minn. 218, 14 N.W.2d 400, which case discusses "inherent and inalienable" rights of Americans at p. 405.

The Minnesota Supreme Court merely affirmed the lower court in its determination that plaintiff's civil rights had not been denied, stating:

> "2. Plaintiff's claim that he was denied his civil rights, alleged at length in the prolix pleadings, is generally an assault upon the 'illegal and improper' proceedings of the city council and public agencies interested in urban renewal. The trial court carefully considered these allegations, together with the most extensive files, depositions, and exhibits relating to them. It

concluded that each of these claims was without substance as a matter of fact and as a matter of law. We agree and think no useful purpose could be served by a reiteration of the trial court's comprehensive opinion."

Issue of right of a citizen to see the letters, papers and documents of the local public bodies.

Although not separately specified in the complaint, it is an alleged right fairly comprised within the alleged right to attend all meetings, being among the "lawful rights and privileges as a citizen, resident and taxpayer * * * of the U. S. A.," as set forth in complaint, par. 10, supra.

Hence, the manner by which the issue was raised in the state District Court was by the complaint, and the questions put to the plaintiff and his answers as set forth in Subsection 1 next above herein. The issue was raised in the Minnesota Supreme Court by the citation of *U. S. Constitution*, Amendments IX and X, and the case of *Thiede v. Town of Scandia Valley*, supra.

Neither the memorandum from the lower court, nor the opinion of the Minnesota Supreme Court, made any mention of the public's documents, maps and other information that have been denied to plaintiff.

"Public Figure."

The issue whether plaintiff was a "public figure" within the rule of *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.ed.2d 686, and *Curtis Publishing Co. v. Butts and Associated Press v. Walker*, 388 U.S. 130, 18 L.ed. 2d 1094, 87 S.Ct. 1975, reh. den. 389 U.S. 889, 19 L.ed.2d 197, 198, 88 S.Ct. 11, 13, and *Rosenblatt v. Baer*, 383 U.S. 75, 15 L.ed.2d 597, 86 S.Ct. 669, was first raised in the lower state court by defendants' Motions for Summary Judgment, and their supporting arguments. The judge of the State District Court granted defendants' Motions for Summary

Judgment of Dismissal for all the defendants dated 10/27/67, except as to isolated claims for separate slanders against defendants Ellings, Krier and Papenfuss. The two alleged libels were disposed of, however, by such dismissal. The Court stated in its memorandum accompanying such Order as follows:

> "There seems to be no doubt but that an attorney who is taking a leading part in a much publicized and somewhat bitter controversy with the Council and public bodies of the city with respect to public matters is a public figure in that community.,"

the Court citing *New York Times Co. v. Sullivan*, supra, and *Associated Press v. Walker*, supra.

In the Minnesota Supreme Court the decision of the lower court was affirmed as to all defendants defending against the allegations of libel; that Court stating at 173 N.W.2d 12, 18, as follows:

> "The judgment is affirmed in so far as it directs dismissal of any of plaintiff's actions; * * *."

The issue of "public figure" was specifically argued in the briefs upon appeal to the Minnesota Supreme Court.

ARGUMENT

REASONS WHY WRIT SHOULD BE GRANTED

1. Issue of right of a citizen to attend all meetings of the local public body.

Plaintiff contends that the people have the federal Constitutional right to know what the public officials are doing in their handling of the public's business. Plaintiff contends that it includes the orally stated plans, debates and decisions of the public body.

Plaintiff contends that when meeting as members of a public body, such as the Council, to discuss the public's business,

that they have no private business, only the public's business.

It is plaintiff's view that the same federal Constitutional Amendments that guarantee a right to attend meetings of the local public bodies guarantee the right of the citizen to see the letters, papers and documents of the local public bodies, and for essentially the same reasons. It is plaintiff's view that the right extends to all meetings where a quorum is present and the public business is discussed.

2. Issue of right of a citizen to see the letters, papers and documents of the local public bodies.

The freedom of the press is secured by the First Amendment. But the press, as a practical matter, can print a true report only of those facts which the reporters observe first hand. So they do inspect public records to secure facts. Hence press freedom includes a freedom to gather as well as to publish facts.

Such freedom is for the benefit of the people. It is not a freedom secured to newsmen as a privileged class apart. Hence the people have the same right of access to the public's facts as does the reporter. The newsman is merely a citizen's alter ego. The reporter serves both the convenience and the necessity of the citizen to determine such facts, for the citizen cannot be all places at once. In some situations determined principally by space requirements, practical necessity may require that the reporter substitute for the people, but such a circumstance is not present in the case at bar.

It is plaintiff's position that in seeking to see the letters, papers and documents of the public, the citizen enjoys all of the liberty afforded to the press by the First Amendment and Amendment XIV. It is further contended that such right is one "retained by the people" pursuant to Amendment IX,

and that it constitutes a "power * * * reserved * * * to the people" pursuant to Amendment X. It is contended that such "right" and "power" are vested in the people by the force of the American Revolution. Plaintiff here contends that Amendments IX and X serve to reinforce the right and power of the citizen beyond that secured to the press by the First Amendment.

It is further contended that such right and power is further secured to the citizen by the Fifth Amendment clause paraphrased as follows:

> "nor be deprived of * * * liberty * * * without due process of law."

This contention is premised upon the viewpoint that "liberty" includes more than freedom from slavery and from false arrest and imprisonment; and that it includes a freedom to pursue the lawful activity of getting the public's facts without major interference. It is plaintiff's position that it includes, for example, (1) a liberty to attend a meeting of a local public body without being forcibly carried out by armed policemen, even though no prosecution, fine or a term in jail follows the event; and (2) a liberty to view all of the public's documents pertaining to a project including those which some Planner has presumed to label as a "confidential report" or one which the local public body withholds because it is "merely preliminary."

The plaintiff asked of AVHRA to see a "Marketability Study." This was denied to plaintiff. Of the Council he asked to see a particular map of the GNRP area but it was not produced for his inspection for over three months. When he requested to see a companion map, he was told that it was lost. It was never produced.

These are but two among several instances of such denials. The Council and the Planning Commission also refused to answer verbal inquiries about the public's business. The

withholding of such information cannot fairly be deemed to fall within the rule of de minimus, because such denials were concurrent with plaintiff's effort to learn the facts about the local urban renewal plans and program by seeking out unannounced meetings at odd times in both the City Hall and in the building of the defendant Chamber of Commerce.

The question presented by issues Nos. 1 and 2 is whether we have an open or a closed society at the level of local government.

3. Issue of "Public Figure."

In its determination the Supreme Court of Minnesota cited 173 N.W.2d 12, at p. 17, *New York Times Co. v. Sullivan*, supra; *Associated Press v. Walker*, supra; *St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.ed.2d 262; and in footnote No. 12 stated:

> "Plaintiff was obviously a 'public figure' as the trial court found. In the words of Associated Press v. Walker * * * he had become such by the 'thrusting of his personality into the "vortex" of an important public controversy'."

It is submitted that plaintiff was not a public figure within such federal rule. Some of the activities and circumstances in regard to Gen. Walker were these, to-wit:

—On 9/26/62—made statement on radio at Shreveport promising that he would be there; on 9/27/62—made television appearance in Dallas and repeated the same sentiments; on 9/28/62—set out his views once again from New Orleans; on 9/29/62—held a press and television conference in which he called for violent vocal protest; on 9/30/62—held a final press conference at which he again urged defiance of court orders and federal power. (18 L.ed.2d 1113, ft. nt. 22.)

—"In contrast to the Butts article, the dispatch which concerns us in Walker was news which required immediate dissemination." (18 L.ed.2d 1113.)

—"He had pursued a * * * career * * * in the United States Army before resigning to engage in political activity. * * *." "Walker had his own following, the 'Friends of Walker'." (18 L.ed.2d 1102.) Walker admitted his presence on the campus and conceded that he had spoken to a group of students (18 L.ed.2d 1103).

—Spoke from the steps of the Confederate Monument (393 S.W.2d 675).

—Chief Justice Warren, concurring in the result, took the view that "as a class these 'public figures' have as ready access as 'public officials' to mass media of communication both to influence policy and counter criticism of their views and activities." (18 L.ed.2d 1116.)

In contrast there is no showing whatever that plaintiff ever made a radio statement, television appearance, or held a press conference. He had no following and was a part of no organization. Nor does the record show any public speech by plaintiff, except when he spoke to the public body. Plaintiff represented no one[5] except himself and his wife.

The record does not show that plaintiff ever solicited the newspapers, radio or television to publish any material, and no such publication was ever made.[6] Any statement of plaintiff's view which was reported in the press was made by plaintiff at a meeting of a public body; and some of such reports contained misquotations.

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[5]At one council meeting on 3/14/66 plaintiff appeared as a spokesman for four 3rd Street small business proprietors. Plaintiff stated that he did not necessarily represent the others even though speaking on their behalf, and that the views he expressed were not theirs in every instance.

[6]Excluded are verbal responses by plaintiff to the reporter's direct questions on about two occasions.

As stated in the complaint, par. 7, "plaintiff has sought to be informed concerning the activity of the public bodies, including 'urban renewal,' by attending and endeavoring to attend meetings thereof, by study, by inquiry, by objection and attempted objection to illegal and improper procedures and otherwise. Plaintiff has likewise sought to prevent the ultimate taking of his office building, * * * through 'urban renewal' by unlawful means."

Plaintiff has denied any unlawful conduct on his part. Defendants' criticism of plaintiff's conduct in three specific instances was at most a criticism of plaintiff's manners, which, in any event, could not have been considered by the lower state court on defendants' motion for summary judgment because controverted by plaintiff's testimony. Even in regard to the occasion when the Councilmen caused plaintiff to be carried out of the meeting bodily by police officers, defendants did not plead any unlawful conduct on the part of plaintiff.[7] At par. 10 of the Ellings' answer the allegation is merely that:

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[7] In defendant Ellings' Minnesota Supreme Court Brief at p. 10 without specifying the statute or ordinance pursuant to which plaintiff supposedly committed an offense, it is argued as follows:

> "Plaintiff had no right to attend the conference in question, his refusal to leave constituted a breach of peace which was committed in the presence of the officers, and the resultant arrest and subsequent detention was legal."

N.B.: This footnote merely takes note of the absence of unlawful conduct by plaintiff even in the view point of defendants. However, defendants' argument in such brief at p. 10 contains distortions of fact which render their legal argument even the more invalid. It is there argued as follows:

> "Appellant's complaint alleges at paragraph 19 that the Chief of Police, James McGabe, and two of his officers, James Brunk and Marlowe Brown, were guilty of falsely arresting him on June 15, 1964.
>
> "As pointed out in Judge Stewart's memorandum the record indicates that on that date a representative of the State Public Examiner was making a presentation to the City Council prior to its regular meeting and appellant, who was told he could not attend, forced his way into the room where this conference was being held, following which the

> "* * * plaintiff attempted to attend although requested repeatedly to leave, and upon his refusal to do so plaintiff was escorted from the meeting room by police officers of the City of Winona."

Also there was no testimony or other evidence of any illegal act or omission by plaintiff that evening. Although on that evening, which was April 12, 1965, plaintiff asked, neither the police officers nor the Chief of Police stated any charge against him. He was not prosecuted, although falsely arrested.

The situation here then is that plaintiff sought to protect his own rights independently and before the proper public

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president of the City Council summoned the Chief of Police and two officers who removed appellant from the room."

The record is clear that plaintiff has neither alleged nor testified to any false arrest and imprisonment on June 15, 1964, although that was the occasion when two representatives of the State Public Examiner's office attended a session of eight council members (Pl.'s Br. 11, 12) and two policemen were summoned.

Plaintiff's Complaint clearly alleges in paragraph 19 that the false arrest and imprisonment incident occurred on *April 12, 1965*, almost ten months later, and it was reported in the Daily News on April 13, 1965 (Pl.'s Br. p. 19, last par.). Defendant Ellings has attested that the arrest occurred on *April 12, 1965*.

Defendant Ellings' contrived argument which misstated the true date, i.e., "*April 12, 1965 alleged in paragraph 19 of the Complaint* of plaintiff's forcible removal by policemen, was apparently deemed necessary to conform to an unsupported fact determination by state District Court Judge Stewart.

By juggling the dates and events it appears the brief sought to lend some plausibility to a false view that plaintiff was "removed" by police from what defendant Ellings terms a "conference," as distinguished from a meeting of the Council held on *April 12, 1965*.

By employing the phrases following, to-wit:

> "* * * (plaintiff) (#1) who was told he could not attend, (#2) forced his way into the room * * *".

some slight pretext for plaintiff's removal is suggested. But there is not one iota of evidence that plaintiff ever forced his way into any room. And by placing such phrase #1 before #2 it was made to appear that plaintiff was told he could not attend before he entered the room (on the occasion that his false arrest did *not* take place). But there is no evidence whatever that on either the alleged and actual false arrest occasion on *April 12, 1965*, or on the incorrect date of June 15, 1964 the plaintiff was told he could not attend until after he was in fact in the room. The evidence is undisputed that on each occasion plaintiff, after entering the room, was ordered out.

bodies. The issue of urban renewal about which he sought information was, of course, an issue of importance to other citizens. Similarly when through his personal and individual interest in urban renewal he encountered secret meetings and the withholding of the public documents, his individual pursuit of facts again probed matters of public interest.

If this activity made plaintiff a "public figure" it was a new status. Unlike plaintiffs in *Butts and Walker*, supra, and the famous ball player in *Spahn v. Messner, Inc.*, 18 N.Y.2d 324, 221 N.E.2d 543, rem. 387 U.S. 239, 18 L.ed.2d 744, 87 S.Ct. 1706, and the former champion in *Dempsey v. Time, Inc.*, 43 Misc.2d 754, 252 N.Y.S.2d 186, aff'd. 22 App. Div.2d 854, 254 N.Y.S.2d 80, there is no evidence that plaintiff was a public figure, even locally, before he opposed urban renewal. Unlike *Walker* he could *not* "fairly be deemed a man of some political prominence." (*Associated Press v. Walker*, 18 L.ed.2d 1094, at p. 1102.)

The desirability of affording freedom to the press in reporting upon public officials is in the best interest of good and democratic government. However, plaintiff spoke out as a private citizen lawfully expressing a minority viewpoint to the proper public officials at their meetings in the public meeting halls. There is no evidence that he was a public figure.

The following quotations, some of them paraphrased, from *Walker* are suggested as particularly germane to the circumstances of the plaintiff:

> "at the threshold of this new constitutional development * * * we counsel(ed) against blind application of New York Times v. Sullivan." (At p. 1107.)
>
> * * * * * *
>
> "The guarantees of freedom of speech and press were not designed to prevent 'the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of

public matters as seems absolutely essential.'" (At. p. 1108.)

Speaking of the conflicting considerations of the public's interest in being informed and the civilizing function of libel suits as a substitute for violence the Court stated:

"We fully recognize the force of these competing considerations and the fact that an accommodation between them is necessary not only in these cases but in all libel actions arising from a publication concerning public issues." (At p. 1106.)

The guarantee of the freedom of speech and press is a social necessity required for the

"maintenance of our political system and an open society." (At p. 1108.)

* * * * *

"The guarantee of freedom of speech and press were not designed to prevent the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential." (At p. 1108.)

* * * * *

"Our touchstones are that acceptable limitations must neither affect the impartial distribution of the news and ideas, * * * nor deprive our free society of the stimulating benefit of varied ideas because their purveyors fear physical or economic retribution solely because of what they choose to think and publish." (At p. 1108.)

* * * * *

"In New York Times Co. v. Sullivan we were adjudicating in an area which lay close to seditious libel, and history dictates extreme caution in imposing liability." (At p. 1110.)

* * * * *

"In the cases we decide today none of the particular considerations involved in New York Times is present. These actions cannot be analogized to actions for seditious libel. Neither plaintiff has any position in government which would permit a recovery by him to be viewed as a vindication of governmental policy." (At p. 1110.)

* * * * *

"In the New York Times case, we held that a state cannot, consistently with the First and Fourteenth Amendment, award damages to a public official * * *." (At p. 1115.)

Unlike the *Butts* and *Walker* cases, the case at bar lies very close to seditious libel. The case is the converse of those where a public official is denied the remedy of libel because of the threat to the free discussion of a public issue. Plaintiff has exercised his lawful right to question and to oppose the plans and acts of the public bodies and the statements of public officials. Plaintiff has endeavored to seek out the meetings of the council and other bodies wherever held, and has objected to the discussion of the public's business in unannounced secret meetings. As set forth in plaintiff's letter of 11/14/64 to the president and members of the Council which was set forth verbatim in defendant Elling's brief, plaintiff spent an entire afternoon in a vain effort to learn from the public officials whether or not a meeting of any public body was to be held on the evening of 11/9/64. Such a meeting was in fact held that evening at the defendant Chamber of Commerce of Winona's building. All members of the Council and of WHRA were in attendance; defendant Krier, the vice-chairman of WHRA, presided; and the public's business was discussed.

Plaintiff has requested to see the public's documents including those held by the non-elective, virtually locally autonomous WHRA concerning an urban renewal program largely financed by the federal government. And WHRA was under the direct supervision and extensive control of the federal government. The statement of the case shows that inspection of some documents was denied to plaintiff by WHRA.

Although the local officials did not characterize plaintiff's activity as sedition, they reacted as if it were. Illustrative of such reactions are as follows:

Defendant Finkelnburg, chairman of WHRA:

> "For more than a year Mr. Beatty has deluged the members of the authority, the city council and other officials with a series of letters complaining about the conduct of public affairs. * * *
>
> "I think the time has now passed where we need to devote any further time to irresponsible, inconsistent attacks on the plan or upon the character and honesty of public officials who have the responsibility for the future of this city."

Defendant Papenfuss, chairman of Planning Commission and General Manager of defendant and alleged co-libelant Radio Station KAGE:

> "In my opinion, anybody that is working for the betterment of the city in some form represents the city. * * * Some of them have official or unofficial positions in the community, and therefore, any time that these people are attacked, you are in effect attacking the city."
>
> * * * * *
>
> "At any time you [plaintiff] have spoken at a meeting you have attacked the things that these people I have just talked about are doing and therefore if you attack something that a person is doing, in my opinion that is the same as attacking the individual personally."
>
> * * * * *
>
> "You god damn son of a bitch, you little son of a bitch, you son of a bitch, I ought to throw you out the window."

Defendant Mayor Ellings:

> "You [plaintiff] are a liar."

Defendant White, alleged co-libelant and Publisher of Winona Daily News and member of Planning Commission (plaintiff was singled out to be named in a particular editorial):

> "Because he has been harassing the city."

President Briesath and the City Council had plaintiff carried bodily from "Irregular Meeting" by armed policemen when he was ordered out and declined to leave.

If a public official successfully pursued a libel action against the private citizen for a statement in one of such citizen's letters, the award would be subject to scrutiny in the eyes of the federal law to ascertain that it not be an award of damages to a public official by the state. Such award might be deemed an "economic retribution" for the citizen's statements to the Council about public business. As such it would not be permissible pursuant to *Sullivan* because of Amendments I and XIV.

In the converse situation here, using the same *Sullivan* argument, the very citizen whom the *Sullivan* doctrine would protect against the state is instead visited with the retribution of being denied a remedy against the officials who have allegedly libeled him.

The end result is that by voicing a position on a matter of the public's business a citizen ipso facto becomes fair game for libel by public officials. Such a doctrine, although efficacious for the silencing of all independent non-agreement, would be a strange doctrine indeed, in a democracy.

It should be noted that the Minnesota Supreme Court merely affirmed the Summary Judgment of Dismissal as to the alleged libels which are alleged in pars. 17 and 18 of the Complaint, stating: "Two of these, alleged as libel, were dismissed by the trial court and we affirm without detailed discussion." 173 N.W.2d 12, at p. 14.

The Minnesota Supreme Court's discussion of *Sullivan*, 173 N.W.2d 12, at p. 17, and *Walker*, 173 N.W. 12, at p. 17, concerned the alleged separate slanders only. It should nevertheless be noted that the stated federal requirement that a public figure:

> "could recover only on pleading and proving that the words written concerning him were the product of actual malice,"

includes "pleading" as one of the prerequisites. However, that prerequisite is not to be found in *New York Times v. Sullivan*, *Associated Press v. Walker* or *St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.ed.2d 262.

Unlike the case at bar, *Sullivan*, *Walker* and *Butts* were tried by juries.

District Court Judge Stewart determined as follows:

> "(3) That none of the defendants, other than defendants Randolph K. Ellings, Joseph E. Krier and Jerry Papenfuss committed any actionable tort against the plaintiff."

This determination disposed of the libels as incidents of the alleged conspiracy and as individual torts. Judge Stewart's memorandum cited *Sullivan*, *Butts* and *Walker;* and he reasoned that plaintiff was a "public figure in that community." The end result is that both the public official and the news media are free to libel the citizen critic.

It would appear that the whole purpose of *Sullivan* is thereby thwarted. For in *Sullivan* it is stated:

> "Raising as it does the possibility that a good faith critic of government will be penalized for his criticism, the proposition relied on by the Alabama courts strikes at the very center of the constitutionally protected area of free expression." (11 L.ed.2d 695, 713.)

Being denied the opportunity to repair the damage to his reputation is indeed a harsh penalty to the citizen. This must be a misapplication of the *Sullivan* rule. It will serve well to silence dissent!

In the classic sedition cases it was the newspaper encountering the wrath of the public official for its comments upon the governmental activity of such official. In the case at bar the press is aligned with the public officials in support of

urban renewal and other, in their stated view, "constructive" programs, as is their right. And the news media is allegedly included in the conspiratorial plan to interfere with the civil rights of and to ruin plaintiff's reputation. In addition plaintiff privately chided the news media for not reporting secret meetings known to such medja.

Since there is no showing that the citizen here has any access to the news media to defend his reputation, there is this additional hazard to free comment upon public affairs in a misapplication of the *Sullivan* rule.

In conclusion it is here contended that the Minnesota Court has misapplied the rights guaranteed by Amendments I, V and XIV, and the *Sullivan* rule as well. Also, the state courts had decided this federal question of substance although the United States Supreme Court has not heretofore made a determination upon analogous facts. Also, the state courts have decided the question in a way probably not in accord with the applicable decision of the United States Supreme Court.

PRAYER FOR RELIEF

Your petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Minnesota; and that, upon such review, such judgment be reversed and remanded.

Respectfully submitted,

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116 Center Street
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APPENDIX A

No. 31 Winona County Peterson, J.

Martin A. Beatty,

Appellant,

41315 vs.

Randolph K. Ellings, et al.,

Respondents.

SYLLABUS

1-2. The granting of summary judgment of dismissal against plaintiff, in action against numerous defendants alleging a conspiracy to defame and degrade him and to deny him his civil rights, is affirmed.

3. The denial of summary judgment to three individual defendants alleged to have uttered isolated slanders against plaintiff, a public figure, in the course of public debate about a public issue, is accorded discretionary review and reversed.

Affirmed in part; reversed in part; and remanded, with directions.

Heard before Knutson, C. J., and Nelson, Sheran, Peterson and Frank T. Gallagher, J.J.

OPINION

PETERSON, Justice.

The issues in this appeal arise out of an action by plaintiff, Martin A. Beatty, pleading separable causes of action against numerous defendants, public bodies and public officials for the most part, tied together by an allegation that they maliciously conspired to defame him and deny his civil rights. The trial court granted summary judgment of dis-

missal for the defendants except only as to isolated claims against three individuals. Plaintiff has appealed of right from the summary judgment against him, and the three remaining defendants have petitioned for discretionary review of the judgment with respect to them.

This litigation is an outgrowth of a long-standing and vigorous public controversy over urban renewal and redevelopment in Winona, Minnesota. Defendants, either as public officials or interested private persons, have been proponents of urban renewal. Plaintiff, a resident of Winona, has been an active opponent of these public programs, perhaps in part because he is, as his complaint discloses, the owner of an affected building. The present litigation, considered in the context of the controversy,[1] compels a conclusion that the claims of plaintiff are without substantial merit and, except as to certain claims not dismissed by the trial court, do not warrant extended discussion.

1. Plaintiff's basic claim of a conspiracy among these numerous defendants is, as the trial court found, clearly without substance. The voluminous pretrial discovery proceedings evince the fullest opportunity for plaintiff to uncover the existence of a conspiracy. All that appears, however, is the obvious fact that defendants shared a common interest in urban renewal and were not favorably disposed to plaintiff's activities in opposition. A natural community of interest among participating proponents in a public debate, including agreement among public officials for the adoption of a particular program, forms no rational basis for any inference that an affront by any of them to their

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[1] This controversy has been here before upon plaintiff's appeal from an order dismissing his action for a declaratory judgment invalidating action of the Winona City Council creating the Winona Housing and Redevelopment Authority. See, Beatty v. Winona Housing & Redevelopment Authority, 277 Minn. 76, 151 N.W.(2d) 584.

common opponent occurred pursuant to a conspiracy to degrade him or deny him his civil rights.

2. Plaintiff's claim that he was denied his civil rights, alleged at length in the prolix pleadings, is generally an assault upon the "illegal and improper" proceedings of the city council and public agencies interested in urban renewal. The trial court carefully considered these allegations, together with the most extensive files, depositions, and exhibits relating to them. It concluded that each of these claims was without substance as a matter of fact and as a matter of law. We agree and think no useful purpose could be served by a reiteration of the trial court's comprehensive opinion.

3. Plaintiff makes several claims against different defendants for defamation arising out of meetings of various public bodies considering the subject of urban renewal. Two of these, alleged as libel,[2] were dismissed by the trial court and we affirm without detailed discussion. Three of these, alleged as slanders, were not dismissed by the trial court:

(a) At a meeting of the Winona Planning Commission on December 23, 1965, defendant Jerry Papenfuss, one of the commissioners, became engaged in heated argument with the

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[2]One alleged libel consisted of a news item in the Winona Daily News of August 20, 1965, which reported a speech by plaintiff in which he charged that "city planning consultants" had concocted a "scheme" for urban renewal. The defendant newspaper added a paragraph reporting the comments of unnamed redevelopment "officials" that plaintiff's claims as to the cost of such scheme were "unfounded."

The other incident alleged by plaintiff as a libel occurred on March 15, 1966, following a speech by plaintiff at a meeting of the city council, in which he charged that members of the housing and redevelopment authority had given information to some persons from which they had reaped private profit. On the following day defendant William O. Finkelnburg, chairman of the authority, with the assistance of its legal counsel, dictated a statement to the counsel's secretary and subsequently read it at a meeting of the authority that same evening. Finkelnburg labeled plaintiff's charges as "irresponsible, inconsistent attacks on the plan or upon the character and honesty of public officials" and deplored the "fact that Mr. Beatty feels it necessary to stoop to this shameful tactic." The statements were published in the defendant public media.

plaintiff as the result of plaintiff's accusations against the defendant Randolph K. Ellings, then mayor of Winona. Papenfuss referred to plaintiff three times as a "son-of-a-bitch," prefaced by certain other adjectives.

(b) At a meeting of the city council on June 15, 1964, defendant Ellings allegedly responded to the unfounded accusation of plaintiff that the council had conducted secret meetings with these words: "You are a liar." And, at a meeting on September 8, 1964, again as part of a heated exchange, Ellings suggested to plaintiff that they could settle their differences in the adjoining alley, which plaintiff took to mean that the debate would be resolved by fisticuffs. The trial court, in denying Ellings' motion for summary judgment, referred only to the second incident, terming it "'a slanderous, or possibly a threatened, assault.'[3]

(c) The third alleged slander involves statements made to plaintiff by defendant Joseph E. Krier, vice chairman of the Winona Housing and Redevelopment Authority, at its meeting on July 21, 1964. This meeting was held in a room at the Winona National and Savings Bank, of which Krier was a vice president. Plaintiff, in a letter to Arthur A. Gallien, executive director of the authority, had protested the practice of meeting at that time and place, urging that meetings be held in the municipal building and at an hour more convenient to those wishing to attend. Plaintiff did attend the meeting, and at that time and place, as alleged in the complaint, Krier spoke these words to plaintiff in the presence of Gallien:

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[3]It is most doubtful that these words constitute an assault and, in any event, that aspect of the alleged tort is, under all the circumstances, de minimis. At the time defendant Papenfuss had labeled plaintiff as a son-of-a-bitch, he had added, "I ought to throw you out the window!" Plaintiff at that time instituted a criminal complaint against Papenfuss for disorderly conduct, which resulted in an acquittal after a 2-day jury trial. Plaintiff instituted no such proceedings against defendant Ellings. These incidents do, of course, reveal the verbal pyrotechnics in this controversy.

"What are you doing here?"

"Why aren't you in your office? You must not have any law business that you can spend all of your time attending meetings."

"You are hurting yourself."

"You have lost a great many friends."

"You are fighting a lost cause and you should have sense enough to know it."

"Do you know what you are doing?"

"I think you ought to see a psychiatrist." [4]

Plaintiff, notwithstanding his allegations that the statements of defendant Krier were inherently defamatory, republished the event himself. He visited the office of E. L. King, chairman of the bank's board, the same day and reported "what had gone on and how [he] had been slandered," and on July 22 he sent King a letter to "serve as a memo of my conversation of yesterday afternoon with you at your office." [5] On November 14, 1964, plaintiff wrote a similar letter to the members of the city council and the members of the housing and redevelopment authority. He also sent copies of the letter to the 450 resident members of the Winona

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[4] Defendant Krier added these words: "Who's behind this? Does your wife put you up to this?" Plaintiff pleads as the innuendo of these latter words "that plaintiff was dominated by his wife." We think the important issue of defamation relates only to the suggested need for psychiatric consultation. Our disposition of that issue in any event, equally disposes of any suggestion that this aggressive plaintiff was wife-dominated.

[5] The letter in part reads as follows: "I explained that I was protesting the conduct and slanders of Mr. Krier. I stated that such conduct was calculated to discourage me from attending future meetings. I commented on the fact that Mr. Krier is an officer of your bank. I also told you that I did not think that Mr. Krier would have dared to make such remarks without the knowledge of the other bank officers. I explained that a further purpose of my visit was to insure that no officer or employee of your bank would try to discourage me from attending such public meetings at your bank in the future."

Chamber of Commerce.[6] If the letter was not a total reiteration of the allegedly slanderous statements, it was otherwise remarkable for its absence of reference to them.[7]

We have determined to exercise discretionary review in this case even though appellate review of orders denying motions for summary judgment will be granted only in most unusual situations. See, Rule 105.01, Rules of Civil Appellate Procedure. The surviving claims against these three individual defendants are but the tag ends of plaintiff's actions against the numerous other defendants rather similarly situated. The issues arise out of the same public controversy and involve utterances of public officials in the course of public meetings relating to that controversy. The trial of these isolated claims might well necessitate long and expensive trial proceedings, an unwarranted imposition upon both litigants and the public in view of our conclusion that plaintiff's claims are as a matter of law without sub-

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[6]This letter in part states: "The meetings of the Winona Housing and Redevelopment Authority are held once a month at 1:10 P.M. on Tuesday, when citizens are necessarily at work. They are held in a small cubicle-sized roomlet, in a private building, the Winona National & Savings Bank. A citizen who has the audacity to squeeze into this meeting can expect to be as grossly abused as he would be at a City Council Meeting. He can expect, for example, that Mr. Joe Krier, the Vice-chairman of this public body, which chooses to function as an oligarchy, will inquire:

"'What are you doing here?'

"'Why aren't you at your office?'

"He can anticipate that Mr. Krier will slander him, and make insulting remarks about a member of his family and about his professional competence."

[7]Plaintiff's letter to King contains all of Krier's alleged statements as printed in the complaint, *supra*, except that the remarks relating to defendant's (sic) wife were simply summarized as "insulting remarks about my wife," in sharp contrast to the allegations of the complaint that it was a reflection upon plaintiff himself. Plaintiff's more widely circulated letter of November 14, however, omitted reference to Krier's statement about plaintiff's need to see a psychiatrist.

stantial merit.[8] We are convinced that the interest of justice will best be served by dismissal of the entire litigation and remanding plaintiff to his original forum of public debate.

We hold that the words spoken by the three defendants, even assuming that they were defamatory, are not actionable. Not all abusive or vulgar epithets, we observe in passing, are inherently defamatory. Calling a man a "son-of-a-bitch," unworthy as it is in public debate, could not reasonably be construed as an actual reference to his ancestry or even as to his general character. Calling a man a "liar" may in many situations reflect upon a man's character, but it is not necessarily so; it is at least no different than labeling an unfounded accusation as a "lie." An invitation to an alley fight would not in any setting constitute slander. To suggest that a man should seek psychiatric advice, spoken in the context of his activities in connection with an urban renewal controversy, does not necessarily connote an accusation by the speaker that he is insane.[9] We need not decide, however, whether these words were nondefamatory as a matter of law, because they are, for other and more basic reasons, not actionable.

First, slander is not actionable without allegation and proof of damage unless the defamatory words are actionable

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[8] Discretionary review in such a case was granted in Time, Inc. v. McLaney (5 Cir.), 406 F.(2d) 565, under the somewhat comparable provisions of 28 U.S.C.A., § 1292(b), for discretionary review by the United States Courts of Appeal within the Federal system. Plaintiff, questioned on oral argument as to his position on the question of discretionary review, interposed no objection to it.

[9] Calling a person "insane" undoubtedly could be considered defamatory if used in the sense of being mentally disordered or incapable of functioning competently, but to label an activity or idea as "insane" is probably no more than a figure of speech characterizing the activity or idea as foolish or ridiculous.

per se. Defamatory words spoken concerning a professional man are not actionable per se unless spoken with direct reference to his professional activity.[10] Plaintiff did allege that Ellings' reference to him as a liar and Krier's reference to him as needing psychiatric consultation were damaging to him "both professionally and otherwise"; but as to all other spoken words he alleged only that they were damaging to his "reputation." The statements of Ellings and Krier were no more directed to plaintiff's professional activity than were those of any other of the defendants. Whatever the sufficiency of the requisite allegations as to damage, there is utterly no evidence of such damage. Plaintiff admitted in a discovery deposition that his law practice had not suffered as the result of any act of defendants.[11]

Second, and more important, the allegedly slanderous words were conditionally privileged, in a constitutional sense, so that plaintiff, as a public figure, could recover only upon pleading and proving that the words spoken or written concerning him were the product of actual malice. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.ed.(2d) 686, 95 A.L.R.(2d) 1412; Associated Press v. Walker, 388 U.S. 130, 87 S.Ct. 1975, 18 L.ed.(2d) 1094; St.

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[10]See, McDermott v. Union Credit Co., 76 Minn. 84, 78 N.W. 967, 79 N.W. 673, and High v. Supreme Lodge, 214 Minn. 164, 7 N.W.(2d) 675, 144 A.L.R. 810. See, also, Gurtler v. Union Parts Mfg. Co., 285 App. Div. 643, 140 N.Y.S.(2d) 254, affirmed, 1 N.Y.(2d) 5, 132 N.E.(2d) 889; Fitzgerald v. Young, 89 Neb. 693, 132 N.W. 127. Barry v. Baugh, 111 Ga. App. 813, 143 S.E.(2d) 489; Sweeney v. Philadelphia Record Co. (3 Cir.), 126 F.(2d) 53; Taylor v. American Export Lines, Inc. (S.D.N.Y.), 222 F. Supp. 1022. But cf. Pattangall v. Moocrs, 113 Maine 412, 94 A. 561; Sweeney v. Schenectady Union Pub. Co. (2 Cir.), 122 F.(2d) 288; Remington v. Bentley (S.D.N.Y.), 88 F.Supp. 166; Munafo v. Helfand (S.D.N.Y.), 140 F.Supp. 234.

[11]He does assert that the expenses of his prior litigation, footnote 1, *supra*, constituted a special damage. Obviously these are neither special damages nor expenses attributable in anyway to the alleged slanders in the instant case.

Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323, 20 L.ed. (2d) 262.[12] To defeat that privilege, it was incumbent upon plaintiff to plead and prove, as to each statement, that the statement was false and that it was written or spoken "with knowledge that it was false or with reckless disregard of whether it was false or not," New York Times Co. v. Sullivan, 376 U.S. 254, 279, 84 S.Ct. 710, 726, 11 L.ed.(2d) 686, 796, 95 A.L.R.(2d) 1412, 1435—that is, that the defendant "in fact entertained serious doubts as to the truth of his publication." St. Amant v. Thompson, 390 U.S. 727, 731, 88 S.Ct. 1323, 1325, 20 L.ed.(2d) 262, 267.[13] Plaintiff generally alleged that the defamatory words were "maliciously" spoken, but that is not a sufficient pleading of constitutional malice. More importantly, there was no evidence of such

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[12]Plaintiff was obviously a "public figure," as the trial court found. The record discloses that at the time plaintiff commenced these actions he had attended almost every formal meeting of the city council since the middle of 1963. He addressed these council meetings on several occasions, and on some of these occasions his public statements were reported in the local media. He attended meetings of two other public bodies interested in urban renewal, the planning commission and the housing and redevelopment authority. And he insisted upon attending a meeting of such private body as the Winona Chamber of Commerce when, on one occasion, its meeting was attended by members of the city council and the housing and redevelopment authority. His views questioning or opposing proposed urban renewal projects were also conveyed by letter to various state and Federal officials. In the words of Associated Press v. Walker, 388 U.S. 130, 155, 87 S.Ct. 1975, 1991, 18 L.ed.(2d) 1094, 1111, he had become such by the "thrusting of his personality into the 'vortex' of an important public controversy."

[13]The focus is on the status of plaintiff as a public figure and not on the status of the defendants. A somewhat similar focusing on the status of the defendants exists for statements made by members of municipal councils or other governing bodies of political subdivisions in the course of public proceedings, Jones v. Monico, 276 Minn. 371, 150 N.W.(2d) 213, but the seemingly more sweeping constitutional privilege makes it unnecessary to rest decision on the latter ground.

actual malice.[14] The trial court in denying defendant's motion for summary judgment stated that "a possible question of privilege would be for the jury." But the question of privilege exists as a matter of law.

The judgment is affirmed insofar as it directs dismissal of any of plaintiff's actions, reversed insofar as it directs trial of plaintiff's actions against defendants Ellings, Krier, and Papenfuss, and is remanded with directions that summary judgment for those defendants be entered.

Affirmed in part, reversed in part, and remanded, with directions.

Upon petition for rehearing, the opinion in the above matter filed on November 7, 1969, is withdrawn and the above opinion substituted in lieu thereof. The petition is denied.

(Endorsed. Filed December 12, 1969. John McCarthy, Clerk, Minnesota Supreme Court.)

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[14]It might be inferred that the statements of defendants Papenfuss and Ellings demonstrated some ill will. And plaintiff asserts that the words of defendant Krier were spoken "angrily and sarcastically" (although defendant Krier asserted that they were spoken as an expression of genuine personal concern). Mere proof of personal ill will, at least without more, as we observed in Rose v. Koch, 278 Minn. 235, 154 N.W.(2d) 409, does not meet the constitutional standard of actual malice. Cf. Goldwater v. Ginzburg (2 Cir.), 414 F.(2d) 324.

APPENDIX B

STATE OF MINNESOTA, SUPREME COURT

Martin A. Beatty,

Appellant,

vs. 41315

Randolph K. Ellings, City of Winona, Housing and Redevelopment Authority of Winona, George M. Robertson, Jr., James Bronk, Marlowe Brown, James McCabe, Harold Briesath, Daniel Bambenek, Henry V. Parks, Muriel Ollom, Jim D. Mohan, Harold Thiewes, James V. Stoltman, Neil Sawyer, Barry Nelson, David L. Johnston, Donald Klagge, Jerry Borzyskowski, Allyn S. Morgan, Jr., L. W. Goldberg, N. J. Fischer, Joseph E. Krier, William J. Thurow, Frank Cunningham, William O. Finkelnburg, E. J. Sievers, Philip Baumann, James T. Schain, Norman E. Indall, William F. White, James Foster, Jerry Papenfuss, Frank G. Mertes, Donald Gray, Howard Keller, Republican Herald Publishing Company, James B. Goetz, Radio Station KAGE, Gem Radio Stations Co., James B. Goetz, Merlin J. Meythaler and Rex N. Eyler, co-partners, doing business as Winona Broadcasting Co., KWNO Broadcasting Co., Chamber of Commerce of Winona, Donald Stone, Arnold Stoa,

Respondents.

[JUDGMENT]

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Winona be and the same hereby is in all things affirmed in part; reversed in part; and remanded, with directions in accordance with the opinion.

Dated and Signed January 5, 1970.

By the Court.

Attest: /s/ JOHN McCARTHY

Clerk.

STATE OF MINNESOTA)
) ss.
SUPREME COURT)

I, John McCarthy, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, March 23, 1970.

JOHN McCARTHY, Clerk.
By /s/ WAYNE TSCHIMPERLE, Deputy.

SUPREME COURT, U. S.

FILED

APR 29 1970

JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1969

No. 1374

MARTIN A. BEATTY,

Petitioner,

vs.

RANDOLPH K. ELLINGS, CITY OF WINONA, HOUSING AND REDEVELOPMENT AUTHORITY OF WINONA, GEORGE M. ROBERTSON, JR., JAMES BRONK, MARLOWE BROWN, JAMES McCABE, HAROLD BRIESATH, DANIEL BAMBENEK, HENRY V. PARKS, MURIEL OLLOM, JIM D. MOHAN, HAROLD THIEWES, JAMES V. STOLTMAN, NEIL SAWYER, BARRY NELSON, DAVID L. JOHNSTON, DONALD KLAGGE, JERRY BORZYSKOWSKI, ALLYN S. MORGAN, JR., L. W. GOLDBERG, N. J. FISCHER, JOSEPH E. KRIER, WM. J. THUROW, FRANK CUNNINGHAM, WM. O. FINKELNBURG, E. J. SIEVERS, PHILIP BAUMANN, JAMES T. SCHAIN, NORMAN E. INDALL, WM. F. WHITE, JAMES FOSTER, JERRY PAPENFUSS, FRANK G. MERTES, DONALD GRAY, HOWARD KELLER, REPUBLICAN HERALD PUBLISHING COMPANY, JAMES B. GOETZ, RADIO STATION KAGE, GEM RADIO STATIONS CO., JAMES B. GOETZ, MERLIN J. MEYTHALER and REX N. EYLER, co-partners, doing business as WINONA BROADCASTING CO., KWNO BROADCASTING CO., CHAMBER OF COMMERCE OF WINONA, DONALD STONE, and ARNOLD STOA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In The

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RANDOLPH K. ELLINGS, CITY OF WINONA, HOUSING AND REDEVELOPMENT AUTHORITY OF WINONA, GEORGE M. ROBERTSON, JR., JAMES BRONK, MARLOWE BROWN, JAMES McCABE, HAROLD BRIESATH, DANIEL BAMBENEK, HENRY V. PARKS, MURIEL OLLOM, JIM D. MOHAN, HAROLD THIEWES, JAMES V. STOLTMAN, NEIL SAWYER, BARRY NELSON, DAVID L. JOHNSTON, DONALD KLAGGE, JERRY BORZYSKOWSKI, ALLYN S. MORGAN, JR., L. W. GOLDBERG, N. J. FISCHER, JOSEPH E. KRIER, WM. J. THUROW, FRANK CUNNINGHAM, WM. O. FINKELNBURG, E. J. SIEVERS, PHILIP BAUMANN, JAMES T. SCHAIN, NORMAN E. INDALL, WM. F. WHITE, JAMES FOSTER, JERRY PAPENFUSS, FRANK G. MERTES, DONALD GRAY, HOWARD KELLER, REPUBLICAN HERALD PUBLISHING COMPANY, JAMES B. GOETZ, RADIO STATION KAGE, GEM RADIO STATIONS CO., JAMES B. GOETZ, MERLIN J. MEYTHALER and REX N. EYLER, co-partners, doing business as WINONA BROADCASTING CO., KWNO BROADCASTING CO., CHAMBER OF COMMERCE OF WINONA, DONALD STONE, and ARNOLD STOA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTORY STATEMENT

The petitioner's statement of the case covers 18 pages of the petition. We submit that this is wholly inadequate to give a fair and accurate picture of what this case was all about. This is not said particularly in criticism of petitioner, but as illustrative of the practical impossibility of compressing or summarizing the factual material that was before the trial court and the Minnesota Supreme Court. For in-

stance, the pleading file alone, including motions and affidavits, contains over 500 pieces of paper; the depositions on file total nearly 700 pages[1] plus over 100 pages in exhibits and nearly 700 pages of notes that Beatty has taken at public meetings. And this isn't all. This is the second case in petitioner's so-called campaign against urban renewal. The first case involved substantially the same defendants and was treated as an action for declaratory judgment (although he did not use that term). Petitioner's 40-typewritten-page complaint in that case was dismissed by the trial court which was affirmed on appeal by the Supreme Court of the State of Minnesota (*Beatty v. Winona Housing & Redevelopment Authority*, 277 Minn. 76, 151 N.W.2d 584), and among other things, the Supreme Court stated:

> "* * * This lengthy complaint asks for no judgment or relief. It does make clear that plaintiff is opposed to everything the city council and the Authority have thus far done with respect to urban renewal in the city of Winona." (151 N.W.2d 586.)

While the appeal in the first case was pending, petitioner commenced the present litigation, again with an 11-typewritten-page complaint, claiming damages by reason of conspiracy on the part of all of the defendants and alleging that the public bodies held secret or illegal meetings as he did in the first case. After voluminous depositions and introduction of numerous exhibits, all defendants moved for summary judgment which was granted as to all except three. Petitioner then appealed to the Supreme Court which affirmed the trial court as to its order granting summary judgment and, exercising its right of discretionary review, reversed as to the three defendants whose motions had been denied and ordered judgment entered in favor of all defendants (173 N.W.2d

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[1]For the convenience of the Court a summary of these depositions has been prepared and is attached hereto as Appendix C.

12). It is this decision that petitioner seeks this court to review.

As we understand petitioner's argument, he is urging a review by this court upon two grounds:

(1) That he was denied some right guaranteed to him by the Constitution of the United States to attend "meetings" of public bodies according to his own definition; and

(2) That he was not a "public figure" within the meaning of this court's definition, such as in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.ed.2d 686.[2]

It is respondents' position that no federal or constitutional questions are involved in either issue.

ARGUMENT

I. There Is No Constitutional Question Involved in Petitioner's Right to Attend Public Meetings or to Frame His Own Definition of What a Public Meeting Is.

The right of petitioner or any other citizen of Minnesota to attend public meetings is governed strictly by state statute.

As to Housing and Redevelopment Authorities, *M.S.A.* 462.441 provides in part as follows:

> "462.441 POWERS; QUORUM; OFFICERS; MEETINGS; EXPENSES * * * Each authority * * * shall adopt such bylaws and other rules for the conduct of its affairs as it deems appropriate. The regular meetings of an authtority shall be held in a fixed place and shall be open to the public. * * *"

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[2]The issue of a right to access to public documents is not even raised in the pleadings. There is no allegation as to what, if any, documents he was entitled to and did not have access to. For that reason the question was not considered by either the trial or the Minnesota Supreme Court and will not be discussed here.

And as to cities and commissions thereof *M.S.A.* 471.705 provides:

> "471.705 MEETINGS OF GOVERNING BODIES OPEN TO PUBLIC Except as otherwise expressly provided by law, all meetings, including executive sessions, of the governing body of any * * * city * * * and of any board, department or commission thereof, shall be open to the public. * * *"

The question raised and passed upon in the lower court is: *What constitutes a meeting within the meaning of these statutory provisions?* Judge Stewart's Memorandum (which is attached hereto, marked "Appendix A") after citing the above statutes states:

> "It is clear, therefore, that all meetings of the Council, Planning Board and Housing Commission must be open to the public. Plaintiff claims that this law means that every time a group of councilmen or commissioners, or board members, in number amounting to a quorum congregate, that their meeting shall be open to the public. It is too plain for argument that this is not the meaning of the law. The language refers to regular or special meetings at which official business may be transacted. In fact, the Statute is probably declaratory of the common law."

See:

Beacon Journal Publishing Co. v. Akron, 3 Ohio St.2d 191, 209 N.E.2d 399 (1965).

Turk v. Richard, 47 So.2d 543 (Fla. 1950).

Alph v. Shadman, 330 Mass. 608, 116 N.E.2d 252 (1953).

Acord v. Booth, 32 Utah 279, 93 Pac. 734 (1908).

Barnes v. City of New Haven, 140 Conn. 8, 98 A.2d 523 (1953).

The Minnesota Supreme Court thought so little of this contention that it disposed of this argument in the following language:

> "2. Plaintiff's claim that he was denied his civil rights, alleged at length in the prolix pleadings, is generally an assault upon the 'illegal and improper' proceedings of the city council and public agencies interested in urban renewal. The trial court carefully considered these allegations, together with the most extensive files, depositions, and exhibits relating to them. It concluded that each of these claims was without substance as a matter of fact and as a matter of law. We agree and think no useful purpose could be served by a reiteration of the trial court's comprehensive opinion."

We submit that as a matter of fact and as a matter of law this question is conclusively determined against petitioner.

II. The Minnesota Supreme Court Was Correct in Finding as a Matter of Fact and Law That Petitioner Was a "Public Figure."

Again, petitioner's statement of the case is so fragmentary on this issue that it does not give this court a fair or complete picture of the record before the trial court and the Minnesota Supreme Court. In addition to the lawsuits, and the publicity of his appearances and statements before various public bodies, petitioner had embarked upon a voluminous letter writing campaign to local, state and federal officials on this subject matter, all of which is in the record. A summary of that correspondence is attached hereto marked "Appendix B."

After hearing and reviewing the evidence Judge Stewart stated:

> "There seems to be no doubt but that an attorney who is taking a leading part in a much publicized and somewhat bitter controversy with the Council and public bodies of the city with respect to public matters is a public figure in that community."

The Minnesota Supreme Court affirmed in a footnote:

"12. Plaintiff was obviously a 'public figure,' as the trial court found. The record discloses that at the time plaintiff commenced these actions he had attended almost every formal meeting of the city council since the middle of 1963. He addressed these council meetings on several occasions, and on some of these occasions his public statements were reported in the local media. He attended meetings of two other public bodies interested in urban renewal, the planning commission and the housing and redevelopment authority. And he insisted upon attending a meeting of such private body as the Winona Chamber of Commerce when, on one occasion, its meeting was attended by members of the city council and the housing and redevelopment authority. His views questioning or opposing proposed urban renewal projects were also conveyed by letter to various state and Federal officials. In the words of Associated Press v. Walker, 388 U.S. 130, 155, 87 S.Ct. 1975, 1991, 18 L.ed.2d 1094, 1111, he had become such by the 'thrusting of his personality into the "vortex" of an important public controversy.'" (173 N.W.2d 17, 18.)

It should be remembered that Winona is a community of about 25,000 persons and whether he is or is not a public figure must be viewed in that context.

An examination of the record in this case discloses the amount of publicity received by Beatty in the local paper all of which he carefully clipped and kept (Paulson deposition page 13). In fact, in his deposition he referred to 10 notebooks which contained notes and newspaper clippings which he has been collecting since 1963 (Carney deposition page 72). Whether petitioner was seeking publicity or not is beside the point. The fact is that his activities over the years, plus the fact that he was a practicing attorney in a small city, did incite public interest. On his deposition he testified that he didn't expect publicity when he started his first lawsuit and, "I didn't get it for a long time," meaning that five days elapsed from the time the sheriff served the papers until any mention appeared in the press (Carney deposition

page 20). He also testified that he felt the press was "laggard" in printing the story about his commencing his lawsuit and so he wrote to the Governor of the state, stating it was his opinion that "newsworthy occurrences" were withheld from publication by the newspaper and radio stations (Paulson deposition page 125). Also, in his deposition he testified that his evidence of malice against KWNO is because they were slow in reporting his litigation against the city (Paulson deposition pages 164, 165). In fact, the newspaper stated that he was a "one man crusade" and petitioner testified that he didn't know whether that was correct or not, but he didn't object to the characterization (Paulson deposition page 28).

If petitioner were not a public figure in the City of Winona before November 14, 1964, he certainly was after he wrote a letter under that date. What happened was the Parking Committee of the Chamber of Commerce held an evening meeting inviting members of the City Council and Housing and Redevelopment Authority to attend to discuss downtown parking. Petitioner took the position then and in the trial court, in the Minnesota Supreme Court, and now in this Court, that this was a meeting open to the public, and that he had a right to attend it; and, in fact, did attend it. His version of the incident he set forth in the letter and sent copies to some 450 citizens of Winona (Paulson deposition page 55, Carney deposition page 27). Because it is illustrative, in spite of its length, a copy of the letter appears as Appendix D.

That petitioner must have considered himself a public figure is illustrated by his motion for change of venue in this case which was served June 7, 1967, and filed June 8, 1967. In it he claimed an impartial trial could not be had in Winona County and supported the motion with a 13-page

affidavit, plus 12 pages of newspaper clippings, pertaining to himself. In it he stated:

> "That it has been demonstrated that a jury panel drawn in the area served by the Winona Daily News and other local news media will not likely produce a jury unprejudiced against affiant."

We submit that even without any evidence, the mere fact that petitioner has commenced two lawsuits against numerous defendants who are prominent public figures in the community, including the mayor, councilmen, and members of the Housing and Redevelopment Authority, accusing them of illegal conduct and alleging that they were all engaged in a conspiracy against him would require a holding as a matter of law that he was a public figure in the City of Winona, Minnesota.

For these reasons, we submit, the petition should be denied.

Respectfully submitted,

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APPENDIX A

STATE OF MINNESOTA
COUNTY OF WINONA

DISTRICT COURT
THIRD JUDICIAL DISTRICT

District Court File No. 24008

Martin A. Beatty,

Plaintiff,

vs.

Randolph K. Ellings, et al.,

Defendants.

ORDER

This matter came on for hearing before the Court on July 13, 1967, upon motions by all defendants for summary judgment of dismissal with prejudice. At the first hearing there was extensive argument, and there was also a motion by the plaintiff to dismiss the motions for failure to comply with the rules of civil procedure as to the definiteness of the statement of reasons for the motions. The motion to dismiss the motions for summary judgment was orally denied by the Court at that time, and the hearings proceeded upon the Court's statement that it would give the plaintiff additional time to present any affidavits or other matters pertinent to the issues, and after arguments on the merits of the motions for summary judgment, the Court adjourned the hearing to August 29, 1967, giving to the plaintiff permission to file additional affidavits at that time, and also to make additional argument and file additional briefs at that time.

On August 29, 1967, a further hearing was held at Wi-

nona. Briefs had been submitted by both parties at the first hearing, and at the second hearing additional briefs were submitted and additional arguments were had. Thereafter plaintiff was by order afforded an opportunity to take additional discovery proceedings, and after those were completed and on October 13, 1967, additional arguments were had, and the motions finally submitted to the Court.

Plaintiff appeared pro se, and by Ben R. Toensing of Counsel. Defendants were represented by Messrs. C. Stanley McMahon and Streater, Murphy & Brosnahan.

After a consideration of the files and records and the briefs and arguments of counsel, the Court finds that the following facts appear without substantial controversy:

(1) That there was no conspiracy among the defendants, or any of them, to deprive the plaintiff of any of his civil rights as a lawyer or citizens, or to defame and degrade him.

(2) That the plaintiff was not deprived by any of the defendants of any of his civil rights as a lawyer or a citizen.

(3) That none of the defendants, other than the defendants Randolph K. Ellings, Joseph E. Krier and Jerry Papenfuss, committed any actionable tort against the plaintiff.

(4) That it does not appear without substantial controversy that the defendants Ellings, Krier and Papenfuss committed no tort against the plaintiff, and that there is a substantial controversy as to whether or not these defendants did on isolated occasions make public slanderous statements regarding the plaintiff. That said alleged slanderous statements were not made in pursuance of any conspiracy.

(5) That it appears without controversy that no notice was served upon defendants City of Winona and Housing and Redevelopment Authority of Winona within the time prescribed by law.

IT IS THEREFORE ORDERED:

(1) That the motions of all defendants, except the defendants Randolph K. Ellings, Joseph E. Krier, and Jerry Papenfuss, are granted, and judgment of dismissal with prejudice is hereby ordered in favor of such defendants and against the plaintiff.

(2) That the motions of defendants Ellings, Krier and Papenfuss are granted upon all issues other than the single issue of whether or not any or all of these defendants made and published slanderous statements regarding the plaintiff, and

IT IS ORDERED, that the case may proceed to trial against the defendants Ellings, Krier and Papenfuss, may request Papenfuss solely upon the issue presented by the alleged isolated slanders above referred to.

(3) That within twenty days after the expiration of stay of proceedings hereinafter granted, the plaintiff or any of the defendants Ellings, Krier and Papenfuss may request separate trials of the alleged causes of action against each of such defendants.

That either the plaintiff, or any of such defendants, may within twenty days after the expiration of stay of proceedings make such amendments of his pleadings as are necessary by reason of this order for summary judgment.

Let judgment be entered accordingly.

A stay of thirty days is ordered.

October 27, 1967.

(Signed) ARTHUR A. STEWART
Retired District Judge
Serving Pursuant to
Sec. 484.61, M.S.

MEMO:

All of defendants have moved the Court for summary judgment of dismissal.

Rule 56.03, as amended, provides:

"The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Rule 56.04 provides:

"If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly."

Rule 56.05, as amended, provides, among other things:

"When a motion for summary judgment is made and supported as provided in Rule 56, *an adverse party may not rest upon the mere averments or denials of his pleading but must present specific facts showing that there is a genuine issue for trial.* If he does not so respond, summary judgment, if appropriate, shall be entered against him."

It is clear, under the rule and the decisions of the Supreme Court, on a motion of this kind that the Court may determine there is no substantial controversy as to certain issues and as to certain parties.

I.

The plaintiff claims the defendants conspired to prevent him from appearing at meetings of the Council, the Housing & Redevelopment Authority, and the Planning Commission, and that pursuant to that conspiracy these bodies held meetings which were not public, and denied the plaintiff an opportunity to be present at such meetings.

In his deposition, and in answer to interrogatories, plaintiff states that he has attended every regular and special meeting of the Council for about three years prior to the commencement of this action, and that he has spoken at most of the meetings. It appears conclusively from the depositions and interrogatories that the plaintiff has been a persistent critic of a good many proposals which were to be presented to the Council, such as the urban renewal and rezoning amendment of the building code, and that he has also been a persistent critic of other official action of administrative officials. Typical of plaintiff's complaints against the Council and its members:

(a) June 15, 1964, was the date of the regular scheduled meeting of the City Council, to be held at 7:30 P.M. The plaintiff arrived early, and found that the members of Council were holding a conference in an anteroom with a representative of the State Public Examiner, who had requested Council members to meet with him informally and discuss some matters relating to city practices and finances. The plaintiff, without invitation, went into the room, although the door was closed, and plaintiff was told the meeting was private, and he and the reporter who accompanied him were told to leave. The plaintiff refused to leave, and the public examiner, mayor, city attorney, and the councilmen present then left the room, and proceeded to the office of City Recorder, locked the door, and proceeded with the discussion. The plaintiff attempted to get in, and two police-

men were summoned, and they forceably removed plaintiff to the hall, and restrained him from further attempting to get in. No official action was taken at the conference.

(b) On November 9, 1964, the parking committee of the Chamber of Commerce held a meeting at the Chamber's office, and invited the Council members, and members of the Housing & Redevelopment Authority and some other city officials to attend and discuss matters of mutual interest. The plaintiff went to the Chamber office, and demanded admittance, the Chamber President refused at first to admit him, because he was not a member of the Chamber of Commerce, but, finally they let plaintiff in, on condition that he would not attempt to speak. Plaintiff declined this qualified invitation.

(c) Plaintiff claims that at one time a majority of the Council, Planning Board and Housing Authority attended a luncheon meeting at a local restaurant, and discussed matters of mutual interest relating to the City, and that he was not invited or notified of the meeting, and that he was not given an opportunity to attend.

The plaintiff does not point to a single instance in which he was denied the right to attend any regular, special, or adjourned meeting of the City Council. On some occasions he was denied an opportunity to speak. This is understandable when his depositions and answers to interrogatories are read. There is nothing to indicate that the Council ever denied the plaintiff a reasonable opportunity to speak on matters pending before the Council.

Plaintiff claims that on several instances members of the Planning Commission attended gatherings at which matters of public importance were discussed, and that he was not notified of the meetings, and was not allowed to be present. He also claims that he was not allowed to speak at some regular meetings of the Planning Commission.

Plaintiff claims that the Housing Authority on several occasions met with groups of people at places other than the regular meeting place of the Housing Authority, and he was not notified of the meetings, and was denied an opportunity to be present.

Plaintiff does not point to any occasion on which the City Council, Planning Commission, or Housing & Redevelopment Authority held any regular, special or adjourned meeting in private, or ever attempted to transact any official business, except apparently on one occasion the Housing & Redevelopment Authority did, at a time other than a regular meeting, adopt some minor resolution. It, however, was not entered in any minutes, and was again taken up at the next regular meeting of the Authority at which plaintiff was present.

The Planning Commission is established by ordinance of the City; it has no governmental functions except to study municipal planning matters and make recommendation to the Council. It has no power to legislate.

The Housing & Redevelopment Authority is created pursuant to Chapter 462 M.S. Sec. 462.441 provides:

> "The Authority shall adopt such by-laws and other rules for the conduct of its affairs as is deemed appropriate."

The Statute also provides that the regular meetings of an Authority shall be held in a fixed place, and shall be open to the public.

Sec. 471.705 M.S. provides:

> "Except as otherwise provided by law, all meetings, including executive sessions, of a governing body of any school district * * * City * * * and of any board, department or commission thereof shall be open to the public."

It is clear, therefore, that all meetings of the Council, Planning Board and Housing Commission, must be open to the public. Plaintiff claims that this law means that every

time a group of councilmen or commissioners, or board members, in number amounting to a quorum congregate, that their meeting shall be open to the public. It is too plain for argument that this is not the meaning of the law. The language refers to regular or special meetings at which official business may be transacted. In fact, the Statute is probably declaratory of the common law. See:

McQuillan on Municipal Corporations (3rd), 13.07, et seq.

See also:

Lindahl v. School District, 170 Minn. 167.

Where the Court said:

> "The purpose of this statute is to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning board decisions or to detect improper influences."

Clearly, there is no possible ground for claiming that the Chamber of Commerce, or its officers, in any way wronged the plaintiff, and judgment must be granted in favor of the officers of the Chamber of Commerce.

The public records, the plaintiff's lengthy deposition, and the answers to interrogatories clearly demonstrate that plaintiff was not denied any of his civil rights by any of the defendants. Under such circumstances, it would be pointless to engage in a long trial which can have no result other than a finding, as a matter of law, by the Court that there was no deprivation of civil rights.

If there were any claim of substance by the plaintiff that he had been denied the right to be present at meetings, the motion on this feature of the case would have to be denied. The plaintiff, under such circumstances, would have a right to cross-examine the defendants, and thus attempt to establish the fact of a conspiracy, but the admitted facts here

presented point to only one conclusion, namely, the plaintiff was not in fact deprived of any civil rights.

II.

Plaintiff also claims that there was a conspiracy to degrade and defame him, and that various defendants libeled and slandered him.

There is a complete absence of any indication that there was any conspiracy to publish any libelous or slanderous statements by the defendants, or that there was any conspiracy at all.

The plaintiff does claim that various libelous and slanderous statements were published by the newspaper, and were made by the radio stations, and a few individual members of the counsel or boards.

The newspaper articles are included as exhibits in the depositions and motions of the parties. A careful reading of the articles fails to disclose anything which the Court could possibly construe to be actionable libel. There is little of substance in the articles, other than a factual statement of what transpired at the meetings of the Council and other municipal boards, and the factual article about the trial of one of the defendants who was charged by the plaintiff with disturbing the peace.

A newspaper has a duty to publish pertinent news of interest to the public it serves. Certainly, proceedings at open meetings of the City governing bodies constitutes news of interest to the public of Winona.

In early cases the Court had said:

> "A newspaper has substantially the same rights as any other citizens and is entitled to the defense of fair comment in the absence of malice. Such a defense is not available where the newspaper publishes statements which would be a libel if not true, unless it acted in good faith."

Trebby v. Transcript Company, 74 Minn. 84.
Clancy v. Daily News, 202 Minn. 1.

and many other cases.

It is now apparently settled that the right of a newspaper to publish the news is guaranteed by the Federal Constitution. In this connection the decisions of the Supreme Court of the United States become important.

N. Y. Times v. Sullivan, 376 U.S. 254, 84 S.C. 710, 11 L.Ed.(2nd) 686.
Curtis Publishing Co. v. Butts & Associated Press v. Walker, 87 S.C. 1975, decided June 12, 1967.

See also:

Rose v. Koch (Minn.), decided Oct. 20, 1967.

In the Butts case the Court was concerned with the libels committed by the newspaper in its stories about a football coach and a retired army general who had been making public statements about race questions. As I understand these decisions, the Court held that a newspaper was not liable for publishing factual reports and fair comments about the actions and conduct of public officers and persons who were public figures, in the absence of actual malice. The Court said:

> "'Actual malice' for the purpose of establishing basis of award to public official for defamatory falsehood relating to his official conduct is established if it is shown that defamatory statement was made with knowledge that it was false or with reckless disregard of whether it was false or not."

There seems to be no doubt but that an attorney who is taking a leading part in a much publicized and somewhat bitter controversy with the Council and public bodies of the city with respect to public matters is a public figure in that community.

It seems clear in this case that the newspaper and radio

stations, which occupy the same position, and their employes would not be liable, unless they maliciously published false statements about the plaintiff. It is impossible to figure any theory upon which malice can be inferred from the articles published in this case. Neither is there anything from which any reference can be drawn that the newspaper or radio stations entered into any conspiracy to commit any wrong toward the plaintiff.

The Court also stated in the Curtis case that privilege pertaining to the factual reports of judicial proceedings is absolute.

It is clear, therefore, that neither the newspaper, the radio stations, nor their officers or employes published any actionable libel or slander of plaintiff, and summary judgment must therefore be ordered in favor of the newspapers and radio stations.

With respect to the defendant Finkelnburg, who was Chairman of the Housing & Redevolopment Authority, the only claim of any libel or slander committed by him is based upon a statement which he made at an open meeting of the Housing & Redevelopment Authority, and which was published in the newspaper. Defendant Finkelnburg's statement was undoubtedly privileged under the rules discussed in:

Jones v. Monico (Minn.), 150 N.W.(2) 213, decided April 21, 1967.

There is nothing on the face of the statement which would admit of any inference of malice or bad faith, nor is there anything in the record before the Court to indicate any such malice.

The only claim of any misconduct of defendant Muriel Ollom, who was a member of the Council for a time, is that at one Council meeting she made a statement to the general effect that "the plaintiff has been attending our meetings

since March, and has been interferring with our work; we have been putting up with him; we want to put a stop to it." This statement is clearly privileged under the decision in

Jones v. Monico

and summary judgment must be ordered in favor of defendant Ollom.

With respect to defendant George M. Robertson, Jr., who was City Attorney of defendant City of Winona, there is nothing to indicate that plaintiff has any cause of action against him, and summary judgment should be ordered in his favor.

With respect to the defendants, the Chief of Police and the two officers, plaintiff's claim seems to be based largely upon an alleged false arrest. The circumstances of the arrest, as described by plaintiff himself, show clearly that plaintiff was creating a disturbance in a public place, and that it was necessary for the police to take him into custody and restrain him for the few minutes that he was restrained.

This was clearly a legitimate and legal arrest for an offense committed in the presence of the officers.

Summary judgment, therefore, must be ordered in favor of the officers.

The only other defendants who are accused of having made any libelous or slanderous statements about the plaintiff are defendants Krier, Ellings, Mohan and Papenfuss. The only charge against Mohan is that he spoke of the plaintiff concerning statements by the plaintiff that the Winona City Council had been holding secret meetings, Mohan saying: "it is a completely false statement." The whole record shows that the statement of defendant Mohan is privileged, and certainly there is no fact showing malice, even if it were assumed that the statement was untrue.

There is a complete lack of any facts presenting a genuine issue as to the commission of any wrongful acts against

plaintiff by any of the individual defendants other than the three mentioned below.

Melin v. Baker, 223 Minn. 319.

Defendants Krier and Papenfuss are respectively charged by the plaintiff with making statements about him of a nature which would be actionable per se, and the record now before the Court would indicate that a possible question of privilege would be for the jury. It is the law that any false statement, oral or written, which reflects upon a person in his business or profession is actionable per se, which means, of course, that it is actionable, without proof of actual damage. The defense of privilege would, of course, be available in proper circumstances. The words used by Krier and Papenfuss themselves are of a nature which permit an inference of malice, and they certainly would be actionable per se.

Plaintiff charges that defendant Ellings challenged the plaintiff to fight and in effect threatened to beat him up. On its face this would be actionable.

Therefore, the motions for summary judgment in favor of defendants Krier and Papenfuss should be denied, and the case proceed against them, but only upon the issues presented by the particular alleged slanderous statements.

As to the defendant Ellings, a somewhat closer question is involved. The Court is inclined to believe a challenge to fight under the circumstances claimed might amount to a slanderous, or, possibly a threatened assault, and, therefore, motion of the defendant Ellings should be denied, and the case allowed to proceed against him, but only upon the issue presented upon the alleged challenge to fight.

As to the municipal corporations, it is clear there is no cause of action against them, inasmuch as it is not claimed that any notice of claim was filed as required by the statute.

STEWART, J.

APPENDIX B

SUMMARY OF BEATTY CORRESPONDENCE

Date	To or From (Addressee or Addressor is Beatty unless otherwise specified)	Subject Matter
Sept. 30, 1963	To Representative Quie	Asking him what the fee for the planning firm will be as federal funds will be involved.
Oct. 4, 1963	To City Council. Copies Congressman Quie, Senators Humphrey, McCarthy, Byrd, Bureau of the Budget, the regional office of Housing and Urban Redevelopment Administration and the Federal Office.	Points out that there are buildings in Winona that would not qualify for renewal and that these "rather obvious facts have somehow escaped the attention of the high-priced city planner" who may have relied on observations of non-resident members of the advisory committee.
Oct. 4, 1963	(Apparently to Sen. Byrd)	That he thought he would be interested because "as a citizen and taxpayer I have pointed out an opportunity for substantial economies" in the urban renewal program.
Oct. 10, 1963	From Quie	No federal funds are involved in preparing the application for federal assistance and the city council has appropriated no money and the city planner is not charging the city for the preparation of the application.
Oct. 10, 1963	From Senator Humphrey	Points out that immediate decisions have been made by the city council with advice of the local planning authorities and that he cannot be of any assistance in implementing Beatty's ideas.

Date	To or From (Addressee or Addressor is Beatty unless otherwise specified)	Subject Matter
Oct. 15, 1963	From Senator McCarthy	He is sure the council will give careful consideration to Beatty's suggestions and will exercise care in proceeding on the most economical basis.
Oct. 29, 1963	From Housing and Home Finance Agency, Washington office	Explains urban renewal programs are primarily local responsibility and are planned and carried out locally including the selection of project areas and the designation of properties to be acquired or rehabilitated. Representatives of the regional office visited Winona and the proposals are tentative and have not been submitted formally. It points out that sometimes sound structures are disbursed through predominately blighted areas that qualify and that said structures may or may not be excluded from acquisition.
Nov. 19, 1963	From Regional Director of Urban Renewal	They do not have a map which may have been used as a basis for preliminary discussions but their files are open to the public inspection during business hours.
Jan. 22, 1964	To Alderman Morgan	Thanking him for a map he sent Beatty.
Jan. 22, 1964	From Mr. Morgan	Pointing out that different boundaries of the general neighborhood renewal plan are being considered.
Feb. 18, 1964	From Regional Director of Urban Renewal	To Mr. Morgan pointing out that the boundary delineations on the map were tentative and general in nature.
May 6, 1964	To Winona Daily News	The newspaper misquoted him in that it said that he said that 10% of a project area was to be completed each year and he said that the initial project must be 10% but doesn't ask for a correction of this "small error." He said he

Date	To or From (Addressee or Addressor is Beatty unless otherwise specified)	Subject Matter
		would have written the article differently.
May 8, 1964	To City Attorney	That it is "regrettable" that a meeting of the city council and the city planner was to be held on Tuesday instead of Monday, the regular meeting date.
June 17, 1964	To State Public Examiner. Copies to Gov. Rolvaag, Attorney General Mondale and the editor of Minneapolis Tribune.	Requests an investigation of the meeting held June 15, 1964, at 7 p.m., between some city council members and employees of the public examiner's office which Beatty was barred from, ordered to leave and didn't and was "subjected to calumny," police officers were summoned in an "obvious and abortive attempt to intimidate me," the council president stated that the meeting was not public because no business is to be transacted, that this was a "sophistry" and he protested the conduct, activity, and illegal interference with his statutory right to be present at a meeting of the city council.
June 22, 1964	To Police Chief James W. McCabe	Referred to the meeting of June 15, 1964, states that he cited MSA 471.705 to the council and "admonished all persons present that I would hold each individually responsible for any interference with my rights to attend a meeting held and with any interference with my person," that he would have admonished the police in like manner, that he assumes the city attorney has advised the chief of police of Beatty's rights to attend the "secret meeting" that verges upon "police state tactics," and that he expects the full protection of the Police Department.

Date	To or From (Addressee or Addressor is Beatty unless otherwise specified)	Subject Matter
June 22, 1964	From the Acting Public Examiner	He replies to Beatty's letter of June 17, points out that field examinations are a preliminary stage to the final audit report and have not been reviewed and approved by his office or the attorney general; that it is the practice to meet informally with public officials so that no advance or unwarranted publicity would occur to harm someone of a good reputation unnecessarily. He points out that the examiners could discuss this with each council member individually but it would take more time. He agrees that meetings of governing bodies called for the purpose of transacting public business should be open to the public.
June 29, 1964	To Acting Public Examiner. Copies to Gov. Rolvaag, Attorney General Mondale and the editor of the Minneapolis Tribune.	Replies to the letter of June 22, 1964, repeats the request for an investigation; states that if his examiners are competent, they should have no difficulty in assembling information and that his policy of "having cozy consultations in secret" before a published report creates suspicion and undermines confidence in the audit. It is one thing for the city council to flaunt the legislature but a different thing for the public examiner to provoke "such anarchy" and no "reasonable person" should accept that the public examiner and the city council did not engage in star chamber tactics.
June 29, 1964	To Editor of Minneapolis Tribune	Enclosing copy of letter to public examiner, registered mail.

Date	To or From (Addressee or Addressor is Beatty unless otherwise specified)	Subject Matter
July 16, 1964	To Housing and Redevelopment Authority. Copies to commissioners, city attorney and newspaper.	Registers his protest that the meetings of the Authority are held in Winona National and Savings Bank.
July 23, 1964	From Acting Public Examiner	That the meeting of June 15, 1964, was not a formal meeting but an informal gathering of the members of the council at which no formal action would be taken. He points out that under the charter of the city of Winona this could not be either a regular or special meeting of the council.
July 22, 1964	From Housing and Redevelopment Authority	That the meetings of the Authority at the Winona National and Savings Bank were held according to the by-laws of the Authority which are on record in its office as well as the Public Housing Administration in Chicago, that meetings involving bid openings are held at the office of the Authority and if an urban renewal program is accepted and a larger place needed the meetings will undoubtedly be held in some other location.
Sept. 21, 1964	To the City Council	Protests policy of conducting secret meetings, imposition of a gag rule, and continued abuse and attempted intimidation of a private citizen in lawful attendance of council meetings. He refers to a meeting at the Winona Chamber of Commerce, September 9, 1964, which he says was a violation of law; refers to a meeting of September 8, 1964, at which Mr. Morse of the WIDA was present, as was Beatty. Mr. Briesath ordered him to leave and he didn't, although Briesath pointed out the

Date	To or From (Addressee or Addressor is Beatty unless otherwise specified)	Subject Matter
		city attorney's legal opinion stated that he had no right to remain in the room. That the mayor told him the two of them could easily settle this by going outside, that he warned President Briesath not to touch his person, that the city attorney shouted at him and the council engaged in "tirades" against him and that the council is proceeding in violation of State law.
Sept. 22, 1964	To Alderman Tribell	Sending a copy of this letter to the council.
Sept. 30, 1964	To the newspaper	About his difficulty attending meetings and that he does not attend meetings away from the municipal building or those that he doesn't know about.
Nov. 14, 1964	To the City Council and Housing and Redevelopment Authority. This letter went to 450 people in Winona.	Written to protest the "unbelievable difficulties" which as a citizen he encounters in attempting to exercise his constitutional and statutory civil rights to attend meetings of official bodies. Complains of meeting held November 9, 1964, at the Chamber of Commerce which the city recorder told him was not an official meeting but was a meeting of the Association of Commerce Parking Committee which the city attorney told him; also, the executive director of the Authority told him that some of the members were getting together at the Chamber of Commerce but it was not really a meeting. Beatty inquired of Arnold Stoa, the Chamber President, about the meeting and explained his civil rights as a citizen would be infringed if he were excluded from the meeting. He made a formal written demand upon the

Date	To or From (Addressee or Addressor is Beatty unless otherwise specified)	Subject Matter
		executive secretary of the Authority. He went to the meeting and was admitted but was told that he could not speak, that the Chamber manager, Mr. Stone, insisted that he somehow join in the "fantasy" that this wasn't a meeting of the Authority. That Mr. Stone and Mr. Stoa do not understand the legal rights of citizens or that the legal rights of citizens are not dependent upon the Chamber of Commerce membership. "The fiction that this convocation does not constitute a meeting of Winona Redevelopment and Housing Authority and of the Winona City Council was glaringly obvious. How anyone associated with any of the public bodies and civic groups in attendance or any person learned in the law would have the effrontery to pretend otherwise is wholly beyond understanding. Such fictions, of course, are commonplace behind the Iron Curtain." He was not surprised that the city attorney interrogated him as he has been slandered, abused, and vilified and the city attorney has baited him. The Housing Authority is an oligarchy and anyone who goes to their meetings can anticipate that Mr. Krier will slander them. Secret meetings mean destruction of representative government, Chamber of Commerce members are not privileged citizens, nor should they be the invisible city government and ought not to seek to hold a docile council as its captive audience.
Dec. 3, 1964	To Pat MacCarty, Reporter on the Minneapolis Tribune	Sending a copy of the November 14 letter. He states, "I invariably concluded that the need for the privacy could only inure to the

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		detriment of the public. I have observed that one fundamental blind spot common to councilmen is their failure to see that all of the council's business is the public's business; and that, conversely, the councilmen, as such, can have no private business."
Dec. 24, 1964	To Housing and Redevelopment Authority	Asks that he be notified of all future meetings unless there is an announcement in the newspaper.
Jan. 20, 1965	To Planning Commission	Requests that he be notified of all meetings of the planning commission which are to be held at other places rather than the regular meetings and that on Jan. 11, 1965, a joint meeting of the Winona Planning Commission and the Winona Board of Education was held at the Winona Junior High School.
Jan. 18, 1965	To Winona Housing and Redevelopment Authority. Copies to the city recorder, Congressman Quie, Senators McCarthy and Mondal and Regional and National Office of Urban Renewal Administration	That a secret meeting was held January 14, 1965, at which a planning firm and marketability survey expert were hired and that this deprived him of the exercise of an important statutory constitutional and fundamental right. Complains about irregular meetings of the planning commission and the Board of Education, the city council and the Board of Education, the city council and the Housing Authority and states who he will hold responsible for notifying him of meetings and he makes this demand as a citizen and a taxpayer.

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Jan. 26, 1965	To Housing and Urban Redevelopment Administration, Washington, D.C. Copies to Congressman Quie, Senators McCarthy, Mondale and Byrd, Bureau of the Budget, Regional Office of Urban Renewal.	Protests "secret meeting" of January 14, 1965, despite his request that he be notified of all meetings. Cites MSA 471.705. (This statute does not apply to public authorities.) Asks for an investigation of the secret meeting, asks that approval of the contracts with the planning firm and marketability consultants be withheld, that federal planning grant funds be withheld until a meeting is reconvened, urged an account be made to the public of the planning grant and the public be informed on the administration's formula for determining the amount of the planning grant, and asks for an explanation why this formula was not applied on the basis of a 30 block area rather than a 48 block area. He demanded an acknowledgment, action and a full report, all promptly.
Feb. 10, 1965	From Regional Director of Urban Renewal	Their reviews reveal that all meetings and official action taken by the authority relative to its urban renewal contract have been in compliance with federal, state and local regulations and there is, therefore, no cause to withhold approval of urban renewal activities of Winona. The amount of the planning grant was the amount requested by the local authority and approved by the city council. His office concluded after a full and careful review that it appears to be in line with advances approved for similar projects.

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Feb. 16, 1965	To Senator McCarthy from Urban Renewal Administration, Washington, D.C.	Refers to previous correspondence with Beatty: "You may wish to inform Mr. Beatty that the federal government does not attempt to control matters of local authority and does not withhold urban renewal funds on the grounds such as Mr. Beatty makes in his latest letter."
Feb. 19, 1965	To Representative Quie from Regional Administrator, Housing and Home Finance Agency, Chicago. Copies sent to Beatty and Quie.	"Our research into this matter indicates that Mr. Beatty has been involved in a continuing dispute with the WHRA, city council, and other local bodies concerning public "meetings." Our records show that all meetings and official actions by the authority have been in compliance with federal, state and local regulations; and there is no reason or authority to withhold approval of urban renewal activities. The planning grant is in line with advances for similar projects.
Feb. 22, 1965	From Representative Quie	There is nothing in particular that can be done to meet your complaint as the urban renewal agency believes activities in Winona are being carried on satisfactorily.
Feb. 23, 1965	To Housing Authority	Enclosing a check for $2 for copy of legal opinion. Was billed $1.55 but declines to accept it because the Authority will likely spend all the money it can get.
Mar. 31, 1965	To George Fort, Sheriff. Copies to Assistant County Attorney Richard Darby, Governor Rolvaag, Attorney General Mattson	Refers to a meeting between Beatty, his wife, City Attorney Robertson, and the sheriff; and also a conference with the assistant city attorney, Beatty and the sheriff. He states he is in fear of great bodily harm or worse, asks for police protection and, so that a

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		record of the circumstances shall be preserved, attaches a two page — apparently verbatim — account of his conversation with Mr. Robertson. (This should be read.)
Apr. 21, 1965	To City Attorney Robertson by certified mail	Asks for the addresses of Will Kohner and the Continental Guide Service.
Apr. 22, 1965	To Acting Public Examiner. Copies to Governor Rolvaag, Attorney General Mattson	Reports a newspaper story on March 21, 1965, that a letter has been sent out to 100 Catholic schools and convents by a Mr. Kohner on city stationery furnished by the city attorney who delivered a check for $4.99 to the city treasurer. This involved a proposed statue of Christ to be erected on Sugar Loaf. Points out that he attempted to purchase city stationery, the council president interrupted him when he tried to speak and the mayor stated that they didn't have to answer his questions. He demands an investigation to determine by what authority the city stationery was sold, how many promotional letters were sent, on what authority has his attempted purchase of city stationery been frustrated, and has the city made any financial commitment and, if so, to whom.
Apr. 29, 1965	From Department of Public Examiner	Replies to April 22 letter, when an examination is commenced the examiner will be instructed to check into the matters.
Apr. 30, 1965	To Governor Rolvaag. Copies to Attorney General Mattson, and Acting Public Examiner Whitaker.	He is completely dissatisfied with the acting public examiner's inaction regarding his question. He has "strained my eyes searching for the word 'formal' in M.S.A. 471.705, to no avail." He states the public examiner is obviously

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		determined to pursue a course in direct violation of the statute, he asks for an investigation of the public examiner. He asks the governor to "satisfy my demands" upon the office of the State Public Examiner and expresses his "insistence" that the council meeting of June 15, 1964, be investigated where his civil rights were "interfered with" by the public examiner's office and he regards "that invasion of my rights with deep gravity." Asks that the governor overrule the examiner and asks him that the state will not interfere with or compromise his civil rights to attend any meetings of the council at which the representative of the public examiner's office attends, whether the meeting is formal or informal.
Apr. 29, 1965	From Retail Credit Company, Atlanta, Georgia	Copy of newspaper article entitled, "Beatty Carried Out."
May 1, 1965	To City Council. Copies to University of Minnesota Daily, Minneapolis Star-Tribune, St. Paul Daily News, American Association of University Professors, American Civil Liberties Union, Minnesota State College Board, Dr. Minne —Pres. of Winona State College —Senator Robert Dunlap, et al.	About a letter from Dr. A. B. Villanueva, regarding academic freedom that calls for "soul searching" by the city council and that it would be interesting to see what Alderman had the courage to investigate this.

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May 5, 1965	To Winona Daily News. Copies to American Association of University Professors, American Civil Liberties Union, Minn. State College Board, President of Winona State College, Senator Dunlap, Dr. Villanueva, League of Minnesota Municipalities.	That the newspaper incorrectly said that Beatty charged that some members of the official family tried to interfere with Dr. Villanueva; it is Dr. Villanueva's charge.
May 6, 1965	From Winona Daily News	It is the policy of the newspaper to publish news fairly and accurately, which they are doing.
May 10, 1965	To Urban Renewal Administration, Washington. Copies to Senator McCarthy, Senator Mondale and Congressman Quie.	Why doesn't the federal government withhold urban renewal funds on the basis of alleged violation of state law?
May 10, 1965	To Regional Administrator, Housing and Home Finance Agency, Chicago. Copies to Senators McCarthy and Mondale, Representative Quie and Mr. Jas. Kleinschmidt.	Refers to their letter of Feb. 10 but they fail to cite legal authority that the meetings were properly held. Asks for the comparables that were employed in arriving at this decision of the amount of the planning grant.
May 10, 1965	To Senators Mondale, McCarthy and Congressman Quie. Copy to Commissioner of Urban Renewal.	Wants to know why the federal government doesn't withhold urban renewal funds on the basis of an alleged violation of state law.

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May 12, 1965	To Senator Laufenburger	Asking to appear at a hearing for legislation that would require Winona to conduct a referendum before buildings are razed in an urban renewal project.
May 27, 1965	From Regional Administrator, Urban Renewal, Chicago	Repeats that the evidence available to them indicates all official meetings and official actions were according to law and that the amount of the planning grant for the preparation of a general neighborhood urban renewal plan is comparable to urban renewal projects in other cities and a detailed description of the supporting data is on file in the Housing Authority available to him at regular office hours.
June 17, 1965	To Housing Authority	Makes a "formal demand" for a printed report of the planner's preliminary plan and the preliminary plan presented by the marketability survey analyst.
June 17, 1965	From Senator Mondale	It appears that a thorough investigation into the operation of the Housing and Redevelopment Authority shows no irregularities on which the Housing and Home Finance Agency could take action.
June 24, 1965	From C. Stanley McMahon	Replies to letter of June 17; both the preliminary planning and marketability study reports are preliminary and contain no information or recommendations that require action by the Authority. The planner retained his copy and the Authority has only one copy of the marketability study. When the final reports are submitted, there will be sufficient copies available for public use and study.

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June 30, 1965	To State Public Examiner	Asks 61 questions on matters that should be investigated involving the following subjects: airport, municipal marina, city stationery, stump cutting, city charter, assistant city attorney, Winona Public Library; fire and police board, John A. Latsch Public Bath Board, airport industrial park, East End Industrial Park, Police Department, Wincrest Addition.
July 7, 1965	From Public Examiner	Acknowledges letter of June 30 that matters will be investigated and included in the formal audit report.
July 6, 1965	From C. Stanley McMahon	Enclosing an extra copy of the preliminary report of the review of the downtown area for vocational school site.
July 9, 1965	To C. Stanley McMahon by registered mail	Returning review of the downtown neighborhood for vocational school site.
July 27, 1965	From C. Stanley McMahon	The draft of the downtown general neighborhood renewal plan is the property of the planner and requests for copies should be addressed to him.
July 21, 1965	To Commissioner Administration, St. Paul	Asking for the date the copy of the resolution of the Winona City Council establishing Housing Authority was filed. The resolution was dated September 20, 1948.
Aug. 4, 1965	To Housing Authority	Refers to a meeting he attended July 20, 1965, requests a copy of the draft of the preliminary downtown renewal plan. The acting chairman stated the plan was preliminary and asked Beatty why he wanted a copy. He states "I was troubled by this police state style of inquisition," and

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		states that he refuses to ask the planner for his preliminary plan.
Aug. 4, 1965	From State of Minnesota Dept. of Business Development	Replies to Beatty's letter of July 29 that the proper copies of the council's resolution were filed November 24, 1948.
July 8, 1965	To State Auditor, St. Paul	Asking what financial assistance the state has given a local air service action committee.
Aug. 26, 1965	To members of the Housing Authority	Demands a retraction of a statement attributed to officials of the Authority printed in the paper that Beatty's figure is unfounded and that conveys the impression that the statement was false.
Aug. 30, 1965	To Housing Authority. Copies to Housing and Home Finance Agency, Urban Renewal Administration, Regional Administrator of Urban Renewal.	Protests "discriminatory gag rule" imposed against him at a meeting August 17, 1965, where the chairman announced "if there is no further business, I will entertain a motion for adjournment," and then Beatty said he wanted to inquire about something and the chairman said it's too late and Beatty said "I protest the adjournment," and the chairman stated "You are in no position to protest." Beatty points out that such procedure was contrary to the "usual pattern" of concluding meetings as contrary to the statutes. He repeats matters in previous correspondence and says that no member of the Authority "protested the iron-handed police state tactics employed by chairman Finkelnburg in imposing such gag rule."
Aug. 31, 1965	To Dr. Villanueva	He has a piece of news "which may be pleasing to you." He started a law suit against the City Housing Authority, city planners

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		and 45 city officials. He says the complaint is 41 pages long but is, "nevertheless, brief as the circumstances permit." Although the papers were handed to the sheriff last Friday, it wasn't until today (Tuesday) that it was mentioned on the radio. He advises "You should endeavor to get a record of slanderous statements reduced to writing and signed by the witnesses. I think that you can search for subjects in the academic community as well as in the civic area."
Sept. 2, 1965	To Governor Rolvaag	He has started a law suit against the city and 42 present and former officials and writes to solicit his protection and the protection of the state. He says this is necessary because his law suit "proposes to halt urban renewal" and that this is contrary to the plans of the "power structure." He says that gag rules, secret meetings, and police state tactics have been employed to keep citizens from attendance at meetings of the city council. That he has no confidence in the local police department or the fire department. "I am seeking your protection as governor. I am not asking any special favors for I am a resident, citizen and taxpayer."
Sept. 7, 1965	From Governor Rolvaag	The Crime Bureau has reported to him that there was absolutely no basis for his fears and suggests that he not expect the state of Minnesota to involve itself in matters of this kind.
Oct. 29, 1965	Public Examiner's Report	There is no authority for the city to sell stationery even though it was reimbursed in the amount of

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		$4.99. The contribution of $400 to the local Airlines Service Action Company was in the nature of an operating expense and therefore legal. (None of the other 59 questions raised by Beatty were even mentioned.)
Dec. 27, 1965	To Mayor Ellings. Copies to all Aldermen, Housing Authority members, Planning Commission members, City Attorney, Regional and National HHFA offices and news media.	He states that citizens' conference is to be a "clandestine gathering," that the mayor does a disservice to the people who elected him, that councilmen are required by law to hold their deliberations in public, that he ought not to be a party to enticing councilmen into "such a secret conference." They will be a captive audience, that Beatty is "touched" by the mayor's concern for the lack of information on urban renewal and urges him to abandon the promotion of this assemblage or open it to the public.
Dec. 27, 1965	To City Council	Asking them to dissuade the mayor from proceeding with the "secret meeting."
Dec. 30, 1965	From City Prosecutor	Asking for suggestions concerning the case of State v. Papenfuss.
Jan. 2, 1966	To City Prosecutor	He suggests that further conferences with the city attorney would not be helpful in securing conviction as he was "shocked and alarmed" to see him checking law on the case with defendants' counsel.
Jan. 9, 1966	To Winona Daily News	He did not charge the city attorney with breach of ethics as the newspaper reported.
Jan. 17, 1966	To Housing Authority	Says he has several major objections to the urban renewal plan including that the planning firm has never been lawfully hired. "I

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		state my objections, so that I may not be subject to an unwarranted criticism that my objections are interruptive of the meeting."
Feb. 5, 1966	To members of the Board of Education. Copies to all nine school board members, also Superintendent of Schools, and the State Board of Education.	At a meeting of January 12, 1966, Beatty at a School Board meeting asked "What members of the School Board attended a luncheon meeting with certain members of the planning commission of the city of Winona?" and the chairman stated "I don't think we have to answer your question." He said that the superintendent told him school board members attended the meeting and "it is apparent that a meeting of the School Board was conducted."
Mar. 2, 1966	To City Recorder from A. F. Paffrath, J. W. Wheeler, Fayatte Ehle, Erwin Bublitz	Stating that they will head a delegation that desires to point out certain defects in the redevelopment plan, requesting a place on the agenda and saying the spokesman will be Martin Beatty.
Mar. 3, 1966	To City Council	Asking that the minutes be amended to show the problem of leasing the City's Marina and the question of a referendum were discussed, although no action was taken thereon.
Mar. 24, 1966	To Winona Daily News	That the article on March 15, 1966, reporting Beatty's talk to the council on March 14 is substantially accurate and complete.
Mar. 25, 1966	To radio station KAGE	Referring to their report of his talk on March 14 is substantially accurate and correct; he deems it is a fair report and is not critical of it.
Mar. 29, 1966	To managing officer of the Montevideo Saving & Loan Association	Winona is on the brink of getting bulldozers rolling for 30 square block area. He reports that he has brought a suit against the city

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		and about 47 individuals, which was dismissed and he appealed it. There have been innumerable secret meetings; he is in fear of great harm. He would appreciate being brought up to date on the Montevideo situation.
Mar. 29, 1966	To City Council	Protests "secret meeting" held March 24, 1966, at which Beatty was present although the city recorder was not and no minutes were kept or action taken. A proposed swap of privately owned property for municipally owned property for airport property was proposed. He protests the council's failure to read all his letters.
Mar. 30, 1966	To Manager of the First Federal Savings & Loan Association of Montevideo	He doesn't like urban renewal in Montevideo.
Mar. 30, 1966	To Federal Communications Commission	Enclosing a copy of Notice of Demand for Retraction that he served on KAGE and wants to know when the application for this station's license renewal will come up.
Mar. 30, 1966	To Owners of Winona Broadcasting Company (KAGE)	Says that their March 16 reports contained libelous statements to Dr. Finkelnburg and that Mr. Papenfuss, manager of the station, slandered him.
Mar. 30, 1966	To Federal Communications Commission	Refers to KWNO same as KAGE.
Mar. 31, 1966	From Rex Eyler, one of the owners of the Winona Broadcasting Company	Refers to the Notice of Demand for Retraction. Asks how it is possible to retract a statement made by another. He agrees with Dr. Finkelnburg's statements and his right to make them and de-

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		mands a letter of apology from Beatty for bothering him.
May 16, 1966	To City Council	Says he will head delegation to appear at the council meeting to offer "constructive criticism" in regard to the urban renewal plan. Complains because the council doesn't read letters.
May 19, 1966	To Housing Authority, Public Housing Administration. Copies to secretary of HUD, General Accounting Office, Washington, and Senators McCarthy, Mondale and Williams.	Demands a confidential report by the marketability analyst and a copy of the letter written by the authority's auditor to Congressman Quie. Complains that Mr. Canfield, an auditor from the Chicago Housing office, said he had no right to read the letter to Quie and this was interference with his civil rights. Asks whether city planning commission members, Schain and Howard Keller, had access to the marketability study. In all he asked 13 questions and denies that he is a trouble maker.
May 19, 1966	To Congressman Quie	Encloses letter of same date to Housing Authority and says that "local bureaucrats" have "lost their acuity to distinguish between public and private records," and doubts that the Housing Authority has any military or diplomatic secrets. That he will insist on exercising his civil rights.
May 23, 1966	To City Council. Copies to Gov. Rolvaag, Attorney General, State Public Examiner, City Attorney, City Recorder, and City Assessor.	Asks 6 questions about the settlement between the city and the Winona Marina, Inc., that operated the municipal harbor and wants an investigation.

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May 24, 1966	To Housing Authority	Asking for a copy of the minutes enclosing a check for $1.00.
May 26, 1966	From Housing Authority	Enclosing a copy of the minutes and returns the dollar; states that the Authority cannot establish a precedent by reproducing copies for everybody but he is welcome to read them.
June 14, 1966	From Quie	There is no justifiable reason why he should comply with Beatty's request providing him with copies of correspondence with Mr. Henry. "In the first place there is nothing in the correspondence that involves you, either as an individual or a citizen. Secondly, I treat all letters I receive as confidential and I would never think of divulging the contents of any letter without the sanction of the writer."
July 8, 1966	To Congressman Quie	He hasn't had a reply to his correspondence from the other addressees.
Aug. 13, 1966	To City Council	Protests the passage of a regulation providing for the creation of Inspectors under City Coordinator because he didn't have a chance to oppose it, and because the legal question exists whether or not the planning commission is legally established, and because he stood up in the council meeting seeking recognition and was not recognized, that this is illegal and he protests again because they don't read all his letters.

APPENDIX C

SUMMARY OF BEATTY DEPOSITIONS

The references in this memorandum are to the depositions of Martin A. Beatty taken before Oren J. Paulson and John Carney. The references as follows to page numbers are to the Paulson deposition.

Page 4—The complaint of this action was the joint product of Mr. Toensing and Beatty. At the second conference Mr. Toensing "suggested that a conspiracy action would be the best from several points of view." Beatty drafted a complaint following Toensing's model.

Page 7—He has no evidence to show that any of the defendants got together and decided on a concerted course of action and his allegation of conspiracy is based on his belief of its existence due to certain things that were done to him. When a man is called "G.D.S.O.B." and does not turn around and "knock the pulp out of the guy" it necessarily damages his reputation.

Page 8—He has been practicing attorney for almost 30 years and is almost a life-long resident of Winona.

Page 9—Since 1963, he has made an effort to attend as many meetings of the public bodies as it is possible for him to do. This started shortly after the proposal for Urban Renewal was presented to the city council. He appeared September 3, 1963, before the council and objected to certain members of the Mayor's Advisory Committee on Urban Renewal of being non-residents of the city.

Page 12—The newspaper reported this meeting and Beatty's objection.

Page 13—He has clipped and filed all of the newspaper articles pertaining to meetings that he attended.

Page 14—At most of the meetings he attended he kept notes showing the date of the meeting, the people in attend-

ance, the time the meeting began and what was discussed although all of the notes do not show all of these things. He made a practice of reading and clipping articles from the Winona Daily News and checking them against his notes and if there was a "substantial distortion," in his opinion, he would write a letter bringing this to the attention of the paper.

Page 16—At the September 4, 1963, meeting he indicated that the money paid for the city master plan was largely wasted because the new zoning ordinance had been "contorted and twisted into conformity." At that meeting he stated that he did not want to be represented on any city commission that was not exclusively composed of residents.

Page 17—He felt this was illegal and told the council so and also the mayor. He objected to rezoning of a commercial building that had been damaged by fire near his home because it violated the zoning code and the master plan.

Page 18—This incident of a variation allowed under the zoning code was the first real interest that he took in appearing before the council and objecting to certain things they were doing. He did not object before this.

Page 19—A newspaper article dated September 19, 1963, reporting the council meeting the night before correctly stated that he said many abuses had sprung from the use of eminent domain in the area of urban renewal.

Page 20—and the "power-grabbing promoters branched out into urban renewal" and that the birth rights of citizens are being sold for a "few million dollars wrapped in tissue paper," that urban renovation results in the involuntary disappearance of many small businesses to the enrichment of developers who are "fat cats."

Page 21—A newspaper article dated November 5, 1963, characterizing him as one of the leaders of the opposition to urban renewal is incorrect, and at the council meeting he

characterized urban renewal as "pork-barrel spending." He stated that some of the members of the advisory committee had "more than an academic interest" in getting the renewal plan adopted and by that he meant that they own property downtown and would profit directly from renewal.

Page 22—He thinks urban renewal is unconstitutional.

Page 23—He thinks non-residents being on the mayor's advisory committee violated his rights as a citizen. He prepared a map representing it to the council,

Page 24—showing the out-of-city residents own property in the renewal area.

Page 25—He made a study of constitutional matters in regard to federal urban renewal and state urban renewal and concluded the program is unconstitutional in many respects but cannot say when he reached that conclusion.

Page 28—He does not know whether the newspaper's characterization of him that he was a "one-man crusade" is correct or not, he wasn't representing anyone except his wife and himself, but he doesn't object to the characterization. He has devoted a great deal of time and effort in opposing urban renewal and has not represented anyone else as an attorney.

Page 29—He is in favor of good government and thinks some of the things he points out indicate bad government. In an article to the newspaper June 21, 1964, he was correctly quoted as demanding a map to see if there was "hanky panky."

Page 30—By this he meant "funny business; something not out in the open" that was secretive might or might not be illegal.

Page 31—He thought that withholding a map from the public was part of a conspiracy to prevent him from knowing what was going on in regard to urban renewal.

Page 32—On June 15, 1964, he went to the council chamber about 7 o'clock. At that time a representative from the

state public examiner's department

Page 33—stated he wanted to talk to the council or report to them matters dealing with the audit.

Page 35—He keeps notes on 3" x 5" cards of meetings of the city council, housing authority, planning commission's meetings and school board meetings that he has attended.

Page 36—At the June 15, 1964, meeting the council was meeting in a room adjoining the council room; although the door was shut, Beatty went in.

Page 37—The representative of the state public examiner was making a report and asked Beatty and the reporter to leave. Beatty said he was shouted at to leave by Alderman Briesath and by the mayor who said he was a liar and a trouble maker and was disturbing the meeting. But although he was told to get out, he did not. The men from the public examiner's office, the city attorney and the mayor all walked out of the room,

Page 38—down the hallway to the office of the city recorder and shut the door and locked it behind them. The president of the council summoned two police officers.

Page 39—A news article dated December 8, 1964,

Page 40—indicates that he submitted a list of recommendations to the aldermen as to how to run their meetings, making ten suggestions.

Page 41—He made some notes of questions that he was going to ask at the council meeting of Mr. Roeseler.

Page 42—One of these was questioning his educational background and qualifications and whether or not he served in the German army.

Page 43—Beatty's notes of this meeting show that in Beatty's opinion Roeseler had no training except for three years in the United States and ~~doubted~~ the validity of his Ph.D. and that he made some mistakes.

Page 44—At a council meeting he questioned the city at-

torneys on the legality of setting up a commission and objected as to why a four-page letter from him was not read at the council meeting.

Page 45—The city recorder had not been reading all of his correspondence at the open council meeting.

Page 47—He defined a secret meeting as where a citizen appears and is told to leave and does leave and then the meeting continues; or if he is forcibly carried out by the police or if no public notice is given of the meeting or the meeting is held at a private place where a member of the public is not privileged to go.

Page 48—Not all meetings of all committees of all official bodies need have public notice but "I think the public must be advised of public meetings" but he had no opinion as to the way notice should be given.

Page 49—He thinks that he should be notified when meetings are going to be held because he has requested it.

Page 51—If a deliberate secret meeting were held, in his opinion, it would be illegal, wrong and constitute wrong doing on those who were there and "to a degree" constitute malfunction in office,

Page 52—but, he would not be prepared to say whether or not this alone would constitute a tort. He wouldn't say that whenever members of the city boards or council got together and discussed any phase of city business this is a meeting open to the public.

Page 53—Less than a quorum of a public body can get together and discuss public business, but:

> "Q. If a quorum is present, then that would constitute an official meeting of which the public would be entitled to notice?
>
> A. Yes, if business were discussed, yes, public business."

Page 54—"I do feel that when public business is discussed by public officials, that the public has the right to be present." Especially if attended by a quorum.

Page 55—Under date of November 14, 1964, he wrote a five-page letter and circulated it to some 300 citizens of Winona. (This letter had to be read to be believed. Most of it concerns Beatty's efforts to force his way into a meeting of the parking committee of the Chamber of Commerce held on November 9, 1964, in the Chamber of Commerce Building to which members of the city council and housing authority had been invited. He referred to this as an "amorphic assemblage." He accused the council President Briesath and city attorney Robertson as "carping and complaining as usual about my 'attitude' toward the city council" and that the Chamber of Commerce Manager Stone insisted "that I somehow join in the fantasy that no WHRA meeting was, in fact, to be held even though its full membership was to be present"; and Mr. Stone's function is to "brainwash the members of the Chamber of Commerce"; that if he had inquired of "Breshnev concerning Krushchev's future" he would have been better informed, that "I was not fingerprinted."

"The fiction that this convocation did not constitute a meeting of the Winona Housing and Redevelopment Authority and of the Winona City Council was glaringly obvious. How anyone associated with any of the public parties and civic groups in attendance, or any person learned in law, would have the effrontery to pretend otherwise is wholly beyond understanding. Such fictions, of course, are common behind the Iron Curtain." That, "by a most remarkable coincidence, while the news gathering media have knowledge of such outrage against them they have omitted to report them to the people;" that the Housing Authority "chooses to function as an oligarchy." He states that monolithic thinking "which is so fundamental to a police state" is epidemic in

Winona and asks "has '1984' reached Winona twenty years early?" That a "gag rule" has been applied to him in the city council and Mr. Fischer has suggested the same for the Housing Authority and asks that the city council repudiates Mr. Stone's question which he says is an "unbelievable suggestion—would you insist on attending this meeting if it were held in my home?")

Page 57—At a council meeting he indicated that the housing code that was being discussed should be "torn up and flushed away" and in fact tore up his copy of it.

Page 58—That an omission from the housing code was either deliberate or the result of "sloppy draftsmanship by the city attorney." Beatty said this was a "reasoned declamation" about the housing code amendments and would not call it a denunciation and doesn't think it took 35 minutes as the newspaper reported.

Page 59—He was only pointing out "what I considered defects" in the housing code and that saying that the code should be torn up and flushed away and tearing up the copy of it in public was, in his opinion, "a reasoned declamation" as well as illustrative.

Page 61—Beatty attended meeting of the council of March 29, 1965, and

Page 62—asked for a review of the sale of a hundred more sheets of city stationery and the city attorney explained the circumstances and he stated that he was shocked that an attorney should say legality was not the basis of all legal judgments. He then offered to buy two hundred sheets of city stationery,

Page 63—and made out a check for $3 and handed it to the city recorder who attempted to return it and then he assured the council that it was covered by sufficient funds.

At a meeting of April 5, 1965, he attempted to reopen the

question of this sale of the city stationery and was ruled out of order.

Page 65—On June 7, 1965, he appeared at a council meeting and again made reference to the $3 paid to the city attorney for city stationery—he said this is an illustration.

Page 66—At a council meeting June 21, 1965, he made the rhetorical inquiry as to whether the certificate of occupancy of the housing originates in Russia or China, stating, "Did this come from Castro or Mao?"

Page 67—At a Housing Authority meeting September 21, 1965, he caused a subpoena to be served, the deputy came there and Beatty left the meeting; this deputy came because he had arranged it,

Page 68—or he had previously given the subpoena duces tecum and that he and the deputy came back into the meeting and the subpoena was served while the business of the meeting was being conducted and it had to come to a halt while the subpoena was read. The subpoena commanded Mr. Bergner, who offices in either San Francisco or Seattle, to produce a list of things at Winona that following Tuesday.

Page 70—Beatty attended meeting of the planning commission held December 23, 1965, and asked which of them were invited to the Citizens' Conference on Urban Renewal to be held at Linehan's Inn the following Wednesday. He also asked that the planning commission urge the mayor to make it a public meeting.

Page 72—He attended the next planning commission meeting on December 30, 1965, and repeated his question of the previous week in connection with which of the members of the commission might have been at a luncheon meeting with the members of the Board of Education on December 21, 1965.

Page 74—He attended a meeting of the city council March 14, 1966, and stated that favored treatment was embodied in

it for some individuals and that the council should investigate what "prior knowledge was possessed of planning by the owners of four lots in block 105 just east of First Ward Park." He stated that according to the records in the Register of Deeds office that the two northerly lots were owned by James Schain, A. M. Oskamp, Jr., and Howard and Ronald Keller and that Schain and Keller were on the planning commission and that the southerly two lots were owned by Mrs. William F. White,

Page 75—and he pointed out that if Huff Street were closed these lots would be increased in value and that this was a defect in the plan because it provided for special treatment for people who owned property on the park.

Page 76—That he asked the council to check into this because he thought it was important for the taxpayers to know if anyone wound up having property in this favorable situation "had the advantage of prior knowledge."

Page 77—That he thought the city council before it adopts a plan ought to determine if there had been any "advance knowledge" and as an example,

Page 78—said the plan says that the telephone company building (which is a new building) is going to stay but the plan does not say that his building (which is an old building) is going to stay and he thought that was unfair and unequal treatment. He expected the council when it checked the ownership of the lots he mentioned would reject the plan.

Page 79—He suspected that these owners had prior knowledge but he didn't know whether or not to characterize that as an illegal act.

Page 80—Under date of October 4, 1963, he wrote to the city council with copies to Congressman Quie, Senator Humphrey, Senator McCarthy, Senator Harry F. Byrd, the regional office of Urban Renewal Administration and the Hous-

ing and Urban Renewal Administration suggesting that the Citizens' Advisory Committee and

Page 81—the city planner be eliminated.

Page 83—On June 17, 1964, he wrote to the State Public Examiner with copies to Governor Rolvaag, Attorney General Walter Mondale, and the editor of the Minneapolis Tribune to demand an investigation of a meeting held June 15, 1964, at which the men from the public examiner's office met privately with the council and excluded him from the meeting. He said this was a violation of the statute and interfered with his rights as a citizen.

Page 85—On July 16, 1964, he wrote to the Housing Authority with copies to its members, the city attorney and the editor of the Winona Daily News protesting the conduct of meetings of the authority at the Winona National and Savings Bank and shortly before July 22, 1964, he went down to Watkins Products, Inc. and had a conference with Mr. E. L. King, Jr., to tell him how he had been slandered by Mr. Krier and wanted to determine whether or not the bank was a party to it.

Page 90—Under date of July 20, 1964, Beatty wrote to the public examiner and sent copies to the governor and the attorney general, the Minneapolis Tribune repeating the request for an investigation of the Star Chamber tactics engaged in by the public examiners.

Page 101—On June 30, 1965, he wrote to the State Public Examiner making inquiry on a number of matters. (This letter contains 10 questions about the airport, 1 about the municipal marina, 5 about city stationery, 1 about stump cutting, 2 about the airport promotion fund, 1 about the city charter, 5 about the assistant city attorney, 11 about the Winona Public Library, 1 about the fire and police board, 4 about the John A. Latsch Public Bath Board, 3 about the airport industrial park, 1 about the East End Industrial

Park, 2 about the police department, 14 about Wincrest Addition, for a total of 61 questions.)

Page 102—He spent the better part of two days with the public examiner

Page 103—and he read in the paper that the city pays the examiner.

Page 104—He testified that these questions he asked the people were not complaints, they were "inquiries."

Page 106—When he turned the check over to the city recorder for $3 to buy city stationery, the recorder handed the check toward him and when he did not take it the recorder tried to put it in his pocket, Beatty brushed it aside and the check fell to the floor. The next day the city attorney brought the check to his office,

Page 107—and the result of his meeting with the city attorney he went to the sheriff and the county attorney.

Page 108—He was concerned about the sale of the stationery because of the fiscal ramification. This involved approximately $4.99.

Page 110—He didn't think the city should hire an attorney to handle the litigation when it has a city attorney, even if the city attorney is named as one of the defendants.

Page 111—He doesn't think the city should be paying the legal expenses for the individuals in a tort action.

Page 112—He wrote in a letter September 21, 1964, to the city council "Alderwoman Ollom stated, 'Mr. Beatty has been attending our meetings since March. He had been interfering with our work; we have been putting up with him; we want to put a stop to it,'" which statement he said was "wholly and utterly false" and that was part of the basis in naming her as a defendant in this suit.

Page 113—She is employed at the Winona public library (in his letter of June 30, 1965, he asked the public examiner whether Mrs. Ollom's employment was legal and whether

she was qualified). His purpose in asking was to see if there was any misspending of public funds in employing a person who "might or might not have the qualifications for the position for which she was hired."

Page 115—The public examiner wrote that he would investigate all of the matters contained in Beatty's letter of June 30.

Page 117—He does not think that a question to the public examiner as to whether the Fire and Police Board of Winona found any financial irregularity in the operation of the police department was an accusation.

Page 118—It is a question asked of the public examiner whose salary is partially paid out of Beatty's pocket.

Page 120—Out of the 61 questions that Beatty asked the examiner, the examiner's final report refers to only two. One that there was no authority to sell the $4.99 worth of stationery and the other that the city's contribution to the promotion of the local airline was in the nature of an operating expense and was alright.

Page 122—He wrote the sheriff and said that he was in fear of his life and the safety of his family, told the same thing to the county attorney, wrote to Governor Rolvaag about it and contacted the State Crime Bureau.

Page 123—His letter to the Governor said that he solicited his protection and "the protection of the state" because he had no confidence in the local police or fire departments. He testified:

> "Q. Did you think if you had a fire and called the fire department they would not come to put out the fire?
> A. I think they might be slow."

The Governor replied to Beatty stating, "The Crime Bureau reported to me that there was absolutely no basis for your fears."

Page 124—Beatty said nobody talked about guns in front

of the Governor who suggested to him that he fight his battles with the City of Winona and a prosecution against Mr. Papenfuss, a member of the planning commission who the jury found not guilty.

Page 125—He felt in one instance that the press was "laggard" in printing his story about his commencing his lawsuit and wrote to the governor that it was his opinion that "newsworthy occurrences" were withheld from publication by the newspaper and radio stations.

Page 126—By this he meant his lawsuit against the city.

Page 127—After the meeting of the city council where he discussed the ownership of property at Huff and Fifth Streets, at the next meeting of the Housing Authority the chairman read a statement in response to him which was carried on the radio stations and newspaper. Beatty served demands for retraction on these news agencies and wrote to the Federal Communications Commission,

Page 128—asking it to notify him when the application of the radio station's renewal of its license will come up. His purpose in doing that was so he could appear and object to the reissuance of a license to the station that libels people. It is his intention to appear before the commission

Page 129—if he had the time and money. He wrote to Senator Laufenburger asking to attend Senate hearings on a bill to conduct a referendum before buildings are razed in an urban renewal project.

Page 130—He went to the state capitol and talked to Senator Laufenburger and Representative Thies and inquired about the time of hearing on this legislation but no hearing was had.

Page 131—He said he sued the newspaper because it has libeled him and managed news to adversely reflect on his motives in opposing urban renewal and thereby help to ruin his reputation as an attorney and a citizen, deny him "lawful

government" and the benefit thereof, and his right to defend unlawful taking of his realty.

Page 133—He said that on August 20, 1965, the newspaper reported that housing officials said Beatty's estimate of cost is unfounded and this was not true and was, therefore, libel.

Page 135—He admits that the newspaper correctly reported what he said and what the housing official said.

Page 137—He thought this was malicious because their knowledge of the facts were very limited.

Page 138—He said additional evidence of malice on the part of the newspapers was because "they have made innuendoes in their editorials which I am satisfied in my mind were directed at me."

Page 140—His case against KAGE is that it reported Dr. Finkelnburg's remarks,

Page 141—which were made at the Housing Authority meeting.

Page 143—It is true that Dr. Finkelnburg construed Beatty's remarks before the council the night before to be personal attacks on the character and personal honesty of various public officials.

Page 144—Dr. Finkelnburg's statement that he has always welcomed intelligent criticism and suggestions is not true.

Page 145—The reason he did not set forth Dr. Finkelnburg's remarks in full was "in the interest of concise pleading." (Beatty's complaint in the first case was 23 pages long.)

Page 147—Each of Dr. Finkelnburg's statements are libelous in whole or in part.

Page 150—He has evidence that he has offered intelligent, constructive and well-thought-out suggestions to the Housing Authority but he has no expert opinion on whether or not his suggestions have been unintelligent and unconstructive or vice-versa.

Page 151—In all of his voluminous correspondence he cannot think of a letter from anyone else that he could present as evidence that the writer thought that Beatty's suggestions were intelligent and constructive and well thought out.

Page 152—His evidence of malice on the part of KAGE is that the assistant manager of the station who is also on the planning commission called him a "G.D.S.O.B.," and that the purpose of that was to drive him and other members of the public away from the commission's meetings. (Obviously, if this was the purpose it didn't work as he continued to attend virtually all commission meetings after that event.)

Page 153—He testified he has a right to attend planning commission meetings, and, under certain circumstances, the right to speak at those meetings; and he thinks he has a right to stand up without being recognized by the chairman and speak to the planning commission and so has anyone else.

Page 154—He didn't have any legal authority with him but he has examined the law and he thinks the legal authority exists in a general way for that statement.

Page 155—A day or so before the planning commission meeting of December 23, 1965, the newspaper reported that the mayor had invited certain individuals to meet at Linahan's Inn to discuss the future of Winona and that was the first time that he knew about it.

Page 156—He went to the planning commission meeting with the intention of raising the propriety of the mayor's calling this meeting.

Page 157—He knew that the meeting was going to be adjourned when he stood up and said he had two questions he wanted to ask.

Page 158—He thinks that constitutionally a person has a right to speak before a public meeting when the public meeting deals "with affecting civil rights and anyone's property

rights" and if the commission allows some people to speak before it, he thinks all the citizens have the same right,

Page 159—in the absence of definite written rules. He would guess that he spoke before the council 15 times.

Page 161—He appeared before the council, not as an attorney, but representing some East Third Street merchants and his wife.

Page 162—He wrote a letter to the council March 2, 1966, which some other people signed.

Page 163—All of his other appearances were in a private capacity and during the period of time he does not know of anyone in the City of Winona who the city council has allowed to air his personal views more than himself.

Page 164—He knows of no other private citizen who received phone calls from the city recorder advising when special meetings of the city council were to be held and when and where.

Page 165—His evidence of malice against the KWNO is because they were slow in reporting his litigation against the city. His case against the defendant Howard Keller is because he was a member of the planning commission while he was "verbally attacked and abused" by Mr. Papenfuss and did nothing to "disassociate" himself from Papenfuss that evening.

Page 166—Mr. Keller didn't prevent him from attending the meeting but he should have restrained Papenfuss from verbally abusing him and afterwards should have taken steps to see the commission disassociate itself from Papenfuss.

Page 167—He thinks that Keller should have told Papenfuss to stop; because he didn't he is liable in damages. Also, Keller should have urged the mayor not to hold a meeting of selected citizens from which the public was excluded because this denied Beatty's rights to attend a meeting of the city council.

Page 168—The defendant Keller was a member of the planning commission and when Beatty tried to talk, the chairman would not let him.

Page 169—Keller's conduct in not taking any overt step to disassociate the planning commission from the slanders and abuse by Mr. Papenfuss is evidence that he participated in a conspiracy.

Page 170—Members of the planning commission participated in not giving him an opportunity to make a formal objection to a forward step regarding urban renewal. (He is referring to the citizen's conference held at Linahan's Inn.) Donald Gray, a member of the planning commission, was sued because he was a member of the commission during the time when the planning commission scheduled a meeting and then no quorum was present.

Page 171—Beatty said he had a statutory right to attend a committee meeting of the planning commission.

Page 172—The Chamber of Commerce invited the city council and housing authority members to meet in the Chamber of Commerce Building and therefore excluded the public, but,

Page 173—in fact, Beatty went and sat through the whole meeting.

Page 174—He admitted that in his argument before Judge Hatfield he said he did not feel that he had a right to go to public meetings and take part in the meetings but just to sit and listen "but to the extent that rules permit all citizens to speak at a meeting" and that the following occurred:

> "The Court: That is where I was wondering if you had that impression. You can't speak unless you are invited to speak. Everyone has a right to file a petition with the government and to speak where they have a notice of a public hearing where they invite people to come and make their expressions known, but I am wondering if you have a theory that you can go to each and

every public meeting and take part in the discussion the same as a member of the Board or Council?

"Mr. Beatty: No, absolutely not.

"The Court: Or ask questions; you don't have this right, do you?

"Mr. Beatty: No, I don't, and there is no allegation in the complaint.

"The Court: But the way you were arguing a moment ago it left the impression that you thought you had those rights.

"Mr. Beatty: No, just to the extent—

"The Court: I think you used the words, 'take part,' and I am just wondering what you meant by that?

"Mr. Beatty: To sit and listen."

Page 176—

"Q. Yes, but you told the District Court Judge in that thing I just read you, that you didn't have any right to ask any questions; just to sit and listen.

"A. That is not what that says."

Page 177—The evidence against the defendant Foster is that he was a member of the commission when Beatty got up and asked a question and Foster didn't answer,

Page 178—and Foster said to Beatty at a planning commission meeting, "Do I have to answer that question; do I have to account for everything I do from the time I get up in the morning until the time I go to bed?" Beatty said this isn't slanderous but infers that the commission was not obliged to allow the public in their confidence. Also, Foster did nothing to discourage the mayor from holding secret meetings of the council.

Page 179—Mr. Papenfuss stated that he was glad he said what he did because it was what everyone had been wanting to say about Beatty, and Mr. Gray, Mr. Foster or Mr. Mertes never denied that that was a fact so that implies they are part of a conspiracy to discredit him.

Page 180—Also, the fact that they did not deny they were part of a conspiracy is evidence they were part of a con-

spiracy. Likewise, Mr. Indall failed to recommend to the mayor that the "secret meetings at Linahan's" be not held when Beatty asked them to. Mr. Indall also attended a meeting of the planning commission at which a quorum was present;

Page 181—the defendant Schain did the same thing and also, as chairman of the planning commission, refused to recognize Beatty when he wanted to state an objection to a proposed step in urban renewal.

Page 182—He wanted to object to the planning commission appointing a coordinator and,

Page 183—his case against the planning commission members includes that after the Papenfuss incident, Papenfuss was promoted to assistant chairman and that is evidence against the planning commission members. He thinks Papenfuss should have disqualified himself from further participation on the planning commission and that his promotion is part of the conspiracy.

Page 184—Defendant Baumann was a member of the planning commission when they met with the school board so he is liable in damages, too.

Page 185—At a city council meeting it was said that Mr. Roeseler, the city planner, had a degree in land economics and Mr. Baumann didn't say that that wasn't true and that's evidence of his participation in the conspiracy.

Page 186—His only complaint against Mr. Baumann is that he was a member of the planning commission when these things happened and didn't do anything about it. The same is true with the defendant Sievers. The defendant Thiewes

Page 188—was a member of the city council and went to the meeting at Linahan's Inn.

Page 189—Mr. Brosnahan was hired as a special assistant city attorney to defend the city council in a suit and met

with the council when Beatty wasn't there and that was a secret meeting which he should have had notice of.

Page 190—He considers the meeting at Linahan's a secret meeting. After the council meetings adjourned he would follow the mayor or councilman in their cars to see whether they went home, where they went, and sometimes took photographs.

Page 191—He didn't specifically recall following councilwoman Ollom in his automobile but he does recall a member of the council calling it to his attention that he had followed councilwoman Ollom and that they didn't like it. If he did follow her it was for the same reason he followed the rest of the council to see if he could "track down a secret meeting of the city council."

Page 192—He followed councilmen about 10 times. He produced a photograph of a police officer and also a picture he took of the White family at the Camera Arts Studio in Lewiston. He took this picture because Mr. White, who publishes the newspaper, "makes a big thing out of trading in Winona and yet Mr. White trades in Lewiston."

Page 194—He took this picture so that if the occasion arose he could show that there was no sincerity in Mr. White's newspaper's position that people should limit their trade to Winona.

Page 195—When he spoke about Mr. White's wife acquiring the property on Huff Street, he had heard that they were going to put a tennis court on the property,

Page 196—but he did not know that Mr. White had no intention of buying the property to benefit by urban renewal.

Page 197—Part of his evidence against Alderman Thiewes is that after a regular meeting some of the members of the council sat down and discussed the lease of the city-owned marina and Beatty sat through the entire meeting.

Page 198—Mr. Thiewes violated Beatty's rights by par-

ticipating in this meeting of which there was no public announcement and that interfered with Beatty's civil rights to attend a public meeting that he did attend.

Page 199—He was not asked to leave but this interfered with his rights

Page 200—to know about meetings in advance and that is how Thiewes participated in the conspiracy.

Page 201—There was another meeting at which members of the city council were present and so was Beatty but Mr. Klagge stated there was no reason to hold a meeting and it wasn't held and that it is part of the conspiracy by Mr. Thiewes. Also, Mr. Thiewes participated in denial by the city council

Page 202—of a public referendum on urban renewal after it had been promised to Beatty, although he is aware that an attorney general's opinion states the city could not use its funds to hold such a referendum; it was the failure to hold a referendum that damaged him.

(The following page references are to the Carney deposition.)

Page 2—Beatty stated his case against the defendant Bambenek was that he was a member of the city council in October, 1963, when a letter from Beatty to the council was not read,

Page 3—and that when the statement was made to the council that the city planner had a master's degree in land economics, Bambenek didn't get up and say that this was false as well as at the time when a preliminary urban renewal map could not be located. Beatty said this damaged him

Page 4—because he couldn't get the true facts in regard to what was going on in the area of urban renewal and also

that the area for the proposed urban renewal program was changed without Beatty knowing about it.

Page 5—This damaged Beatty because certain officials of the city think that he is a trouble maker and he in fact, is not a trouble maker. When he writes letters that aren't read, then this wrongly characterizes him and contributes "to the discrediting of me by word and deed."

Page 6—Also, defendant Bambenek was a member of the council when the city attorney

Page 7—stated that the first project area would be one city block and this was incorrect and Mr. Bambenek neglected to pursue and correct this statement. He testified that citizens would naturally rely on the statement of the city attorney but he didn't.

Page 8—Beatty wrote a letter to the city council stating that the first project would have to be 10% of the total area and was damaged because defendant Bambenek didn't point this out,

Page 9—and which contributed to the damage resulting from the conspiracy. At 6:30 p.m. June 1, 1964, the city attorney was meeting with the council and Beatty couldn't attend, and that at another meeting he was asked to leave and that policemen came, for the purpose of intimidating him,

Page 10—and this is the meeting at which the public examiner wanted to talk privately with the councilmembers.

Page 11—The council met and then recessed without doing any business; this damaged Beatty because it took up a great deal of his time.

Page 12—He said he was damaged because he had made a statement that the city master plan had not been adopted,

Page 13—and the impression followed that he didn't know what he was talking about and that hurt his reputation.

Page 14—The defendant Bambenek was a member of the council and attended a meeting at the Chamber of Commerce

which with the city council "operated in concert" to keep the public from that meeting.

Page 15—The president of the Chamber of Commerce told him he could not attend but he went anyway, but was "subjected to an inquisition" by the city attorney and president of the council in the presence of the secretary of the Chamber, who said he could attend if he conceded that it was a meeting of the parking committee of the Chamber of Commerce and not of the city council and Housing Authority but he could not accept "such a fiction."

Page 16—He does not belong to the Chamber of Commerce. It is his opinion that everytime a majority of the city council gets together that that constitutes a meeting of the council and he has a right to be there providing the meeting is for discussing or acting upon the business of the public. He doesn't know whether he has a right to be present everytime a group of the city council gets together because he hasn't looked up that question.

Page 17—On August 8, 1964, the executive director of the Winona Industrial Development Corporation was in the council committee room to discuss a new industry that was thinking of coming to Winona. Beatty was told the meeting was private but he stayed anyway.

Page 18—He was told that the discussion should be kept in confidence but Beatty refused to do that and so the meeting wasn't held. He cited the statute and the council president said, "We heard the statute, we don't want to hear any more about the statute," which Beatty says was "outrageous" and Mr. Bambenek who was there didn't say anything. He was challenged to an alley fight by Mayor Ellings,

Page 19—and Bambenek was a member of the council at the time. So was Mr. Tribble and Mr. Holden but he didn't sue them because it appeared to him that Mr. Tribble didn't know as much as Mr. Bambenek about what was going on.

Page 20—The council had a "discriminatory gag rule"

Page 21—because the president ruled that a citizen was out of order unless he should speak something constructive and this had not been the prior policy of the council.

Page 22—He said the council had a selective policy in regard to the reading correspondence. Beatty has ten or twelve binders full of notes and clippings to which he referred at the deposition.

Page 23—At a late meeting of the council the doors were locked and he

Page 24—had to leave the city building through the door to the police department which leads into the alley and this embarrassed him.

Page 25—He called Alderman Bambenek if he knew about particular meeting and he said he didn't know. His reputation as an attorney before 1963

Page 26—was good, but he thinks that now it is less good because prospective clients do not have confidence in his veracity and think he is a trouble maker and doesn't know what he is talking about, is not constructive, is a rabble rouser, one who is dominated by his wife and ought to see a psychiatrist and who engages in emotional tirades at public meetings. These impressions are false he says.

Page 27—He thinks that the false impression that there is some question in the community as to his sanity affects his reputation with some people.

> "Q. And do you feel that any activities that you have engaged in in the last three years have in any way contributed to that poor reputation?
>
> "A. I can think of none."

The letter of November 14, 1964, went to about 450 people of Winona, including all the members of the Winona Chamber of Commerce.

Page 28—He did this because he felt it was the only way he could defend his reputation.

Page 29—When asked if he would affirm or deny that there were people in town who thought that it was quite odd for an attorney to send letters of this nature to 450 people, he said he hadn't thought about it in one way or another and doesn't know whether people thought it was strange. He was not aware that some people thought it was a joking matter.

Page 30—He thought that starting two lawsuits against most of the public officials in town would serve to repair some of the "awful damage" that has been done to his reputation. He thought that Judge Hatfield's decision dismissing his first action had a tendency to be destructive of his reputation.

Page 32—That Judge Hatfield dismissed the action had the effect of undoing what good might have come from bringing the action in regard to his reputation "for the time being" and "would bring the damage to my reputation up to where it was before the initiation of the action * * *." He testified that his reputation in the community is that maybe he needs to see a psychiatrist.

> "Q. Have you done anything to contribute to that reputation?
>
> "A. No, I certainly have not."

and in his opinion all of his acts have been that of a completely rational man and nothing he has done has been inconsistent with rational action.

Page 34—He would consent to a psychiatric examination and this reputation affects him as an attorney but hasn't hurt his business or if it has, not very much. He has no proof that he has lost any clients, and has not been hurt finanically in his profession.

Page 35—He agreed that he has spent a great deal of time

going to meetings and writing letters and bringing lawsuits,

Page 36—but hasn't suffered a loss of income because he doesn't spend as much time in pleasurable activities as he did when he didn't have to be so energetic in defending his civil rights. In his action he asked for $2,000.00

Page 37—for legal work by himself for himself in the declaratory judgment action and he spent $955.96 of his own money.

Page 38—He carries a trust account but it is his money that is in it and pays it to himself when he thinks he has earned it.

Page 41—He has no testimony and no witness will testify that any of the defendants actually sat down and met or had conversations laying out a plan or procedure for the conspiracy.

Page 42—He thinks that the $247,000.00 damages is a modest sum for the damages to the reputation to a lawyer of prior good reputation.

Page 43—He thinks that the correspondence that he has directed to other persons would have the effect on some of them of having them think his reputation is good and on others a different effect.

Page 44—He thinks that Governor Rolvaag could have "falsely" concluded that his complaint was nothing but a tempest in a teapot.

Page 46—The defendants all acted in the course of pursuing the city's business.

Page 47—He was aware within 5 or 6 months after going to these meetings that he was damaged. This would be in late 1963. He knew it for sure when he was carried out of the council meeting by the police.

Page 48—He thinks that he was falsely arrested and im-

prisoned. That is his complaint against the Police Chief McCabe and Officer Bronk,

Page 49—which was in 1964.

Page 51—Police Chief McCabe spoke loudly and harshly to Beatty when "I said that his department was engaged in police state tactics."

Page 52—He was never served a notice in the City of Winona, that he has been damaged in tort, and would seek damages.

Page 54—The city passed a resolution raising the fee for receiving copies to $.50 which Beatty thinks applies to few people except himself.

Page 58—As to the meeting of the Chamber of Commerce, Mr. Stoa told Beatty that it was a committee meeting of the Chamber and that these meetings were open to all members of the Chamber and that if he wanted to go all he had to do was join and Beatty replied he didn't want to do it that way.

Page 59—The subject of the meeting at the Chamber Building was parking as there was a meeting of the parking committee of the Chamber of Commerce and members of the City Council and Housing and Redevelopment Authority had said they were invited to attend. Beatty went anyway, although he was told that he couldn't.

Page 60—It is his position that he had a legal right to attend that meeting and says that it was an official meeting as all meetings of public bodies discussing public business are "official meetings."

Page 61—It is his position that the members of the Housing Authority and the council when they were invited to attend a parking committee meeting of the Chamber and went there, they committed an illegal act while they were discussing the public business. His authority for this is the Constitutions of the United States of America and the State of Minnesota.

Page 62—He is familiar in a general way that the meetings of the Housing Authority are governed by its regulations and by-laws. He does not contend that the meeting at the Chamber office was regularly called in accordance with the by-laws,

Page 63—and he thinks that they did take action by instructing the secretary to make a telephone call to Chicago and he thinks that if a quorum of the authority asked the secretary to make a phone call that it must be done at a meeting.

Page 64—He admits that he has attended more meetings than any other citizen in Winona in recent years.

Page 65—With the exception of Mr. Briesath, he doesn't think any one of the defendants has attended as many public meetings as he has.

Page 67—He contends that all of the defendants are conspirators and have committed illegal acts in the sense that they have wronged him and interfered with his rights.

Page 68—He would not say that they were all criminals and doesn't claim in his complaint that it is criminal conduct although it may conceivably be. The action that he complains of of members of the Housing Authority was in connection with their responsibilities and activities as commissioners of the authority.

Page 70—One of his complaints is that he wants to be heard on the subject of urban renewal more than he has been.

Page 71—The purpose of bringing the first action was to halt and lawfully interfere with the progress of urban renewal. The purpose of this action is to collect damages and no other purpose.

Page 72—He doesn't care whether he gets publicity or not. At the deposition he referred to 10 notebooks which con-

tained notes and the newspaper clippings which he has been collecting since 1963.

Page 73—He concluded in 1964 that he would "have to sue Mr. Krier" but it was only about two months before he started this action that he arrived at the conclusion to sue the Housing Authority.

Page 74—He never made a written demand to the Housing Authority for damages.

Page 75—He does not maintain that he has a right to participate in meetings of the Housing and Redevelopment Authority without the permission of the chair to speak and he has never done that.

Page 80—He accused Dr. Finkelnburg of imposing a gag rule in connection with his position as chairman of the authority and he considers that an illegal act.

Page 81—As an example, Dr. Finkelnburg stated at the meeting that no one could say anything unless they were recognized by the chair and that this is an illegal statement and is a distinct discriminatory abuse of his powers as chairman,

Page 82—and is violating the provisions of the constitution and it is unlawful for the authority to let some people speak and not others and they have to listen to them whether they want to or not if they listen to other people.

Page 83—He said that Mr. Krier's statement as to asking why he wasn't at his office and he must not have any law business so that he could spend all of his time attending public meetings

Page 84—is false.

Page 86—Mr. Krier's statement, "I think you ought to see a psychiatrist," was intended to mean that Beatty was emotionally or mentally unbalanced and that this is false. He knows that it is false because he went through the Mayo Clinic in 1960 and after taking a test went over it with the psychiatrist.

Page 87—He has not gone to a psychiatrist since 1964.

Page 88—Up to the time of taking the deposition he had not intended to introduce any testimony along this line but may introduce the results of the Mayo Clinic tests. It is his view that he is presumed to be emotionally and mentally stable.

Page 95—The appearance that he made at the city council the night before Dr. Finkelnburg made his statement at the Housing Authority meeting, was planned and delivered with prepared exhibits.

Page 97—The KAGE news carried a report of what Beatty said, part of which is as follows: "Dr. William Finkelnburg, chairman of the Winona Housing and Redevelopment Authority, had spoken of the goodies that we are to derive from the non-cash credits to be derived from Winona State College construction. Beatty stated that maybe some goodies were being considered along Huff Street," and that was an accurate statement of what he said. He admitted that he inferred that Dr. Finkelnburg and members of the Housing Authority are distributing some "goodies" and he inferred that Mr. and Mrs. White, Mr. Oskamp, Mr. Schain and Mr. Keller were taking some unfair or illegal advantage of the Housing Authority,

Page 98—and he inferred that Mr. Schain, chairman of the planning commission, had some advance information by reason of his position or from the Housing Authority which permitted him to take a private advantage.

Page 99—He admitted that he got up at the council meeting and said that the council should investigate the goodies.

Page 100—There were a number of people present probably seventy-five and what he said was intended for the council and for the public.

Page 101—By making these statements he inferred that there was something wrong and thought there was something

wrong and still does. It is his personal view that Mr. Schain had some inside information that he was benefiting by,

Page 102—and that it looked "fishy" to him. He agreed that a public statement that somebody should be investigated is an accusation.

Page 103—He doesn't think that Dr. Finkelnburg's statement that he construed Beatty's remarks to be personal attacks on the character and personal honesty of public officials is a fair conclusion but "it comes pretty close to what I was there saying."

Page 104—He didn't admit he was inferring that the people he mentioned were dishonest although in his own mind he thought there was some connection between the fact

Page 105—Schain bought some property and was on the planning commission.

Page 106—He hasn't checked the master plan in 1959 but assumes that it shows the planning of Huff Street the same as the renewal plan. He didn't check it before making the public statement but he doesn't think that was a reckless statement.

Page 108—He didn't check the neighborhood renewal plan to see that it showed that Mr. White's home would be taken if the plan were adopted.

Page 109—He considered his building in a better category than the Merchants National Bank

Page 110—because it is owned by an individual rather than a corporation. He doesn't know whether it is in as good a state of repair as the Merchants Bank or not but doesn't think so.

Page 111—He doesn't think the condition of his building has anything to do with the lawsuit. He does not have any tenants in it. He admitted that Dr. Finkelnburg's statement that for more than a year Beatty has deluged members of the

authority and city council and other officials with a series of letters complaining about the conduct of public affairs is correct.

Page 114—In Beatty's judgment, the first project is too big.

Page 115—He never called any of the defendants any of the names that might damage their reputation.

Page 116—He did characterize promoters as "fat cats."

Page 117—He referred to defendant Morgan and other councilmen inferring that there was something wrong, that they were engaged in unlawful activity and that they ought to be investigated.

Page 118—He had stated that Dr. Finkelnburg enforced an "unlawful gag rule."

Page 120—He doesn't think that starting a lawsuit is a public accusation. He didn't expect publicity when he started the first lawsuit and "I didn't get it for a long time."

Page 121—By that he meant that 5 days elapsed from the time the sheriff served the papers until any mention of the suit appeared in the press.

Page 127—He thinks that Governor Rolvaag and the State Crime Bureau were wrong.

Page 128—He doesn't know why he was carried out at a council meeting but he knows he was carried out. He knows he was asked to leave and didn't.

Page 129—He determined that he had a right to be in the room when the city council wanted to caucus because he had determined the rights of a citizen beforehand, and had looked up the law.

Page 130—He says he has authorities to back him up but didn't produce them. His authorities are the Constitutions of the United States of America and the State of Minnesota but he can't state specifically what part of them say a quorum of public persons shall constitute a public meeting.

Page 131—He thinks that even if he were wrong that a quorum is not a public meeting that he shouldn't be carried out, that the proper remedy would be an injunction.

Referring to the letter of the public examiner to the effect that the meeting was an informal meeting and not a public meeting, he admits that he didn't have any business there, "if there can be such a thing as a non-public meeting."

Page 136—He admits that he has no right to go into the Chamber of Commerce "under any normal circumstances."

Page 139—Other than Mr. Krier and Dr. Finkelnburg, he has no evidence that any other members in the authority participated in any conspiracy other than they were members of the authority at the time that certain actions by the authority were taken.

APPENDIX D

116 Center St.,
Winona, Minn.

November 14, 1964

President and Members of the Winona City Council and
Ex. Dir. and Members of the
Winona Housing & Redevelopment Authority

Dear Madam and Sirs:

I am writing this joint letter to the two public bodies above named to protest again the unbelievable difficulties which I as a citizen continue to encounter in simply trying to exercise my constitutional and statutory civil right to attend meetings of official public bodies.

My letters of protest to each body above named are on file in the offices of each.

I recite the following frustrations which would be a

comedy of errors except for the fact that they demonstrate a tragedy of civil irresponsibility, to-wit:

At about 1:40 p.m. on Monday, Nov. 9, 1964 I phoned the City Recorder and inquired, "Is there going to be a City Council meeting tonight?" Mr. Carter reponded, "No. There is going to be some kind of meeting at the Association of Commerce at 7:30, but it is not an official Council Meeting." I inquired, "Who called the meeting?" Mr. Carter answered, "I don't remember."

I then phoned City Attorney George Robertson, Jr. I inquired, "Is there a meeting of the City Council, or the Winona Housing & Redevelopment Authority, or the City Planning Commission, or the Board of Zoning Appeals scheduled for tonight?" Mr. Robertson replied, "Not that I know of. There is some kind of meeting at the Chamber of Commerce that Mr. Stone told me about. I haven't been invited, but I am going to attend."

I inquired, "What public bodies are attending this meeting?" Mr. Robertson replied, "I don't know that any public body is attending, but I think that members from several bodies will be there. It is a meeting of the Association of Commerce Parking Committee. It is not a City Council meeting." I asked, "Can you, as City Attorney, advise me whether or not the meeting is open to the public?" He answered, "I don't know, you can decide that yourself."

I next phoned Mr. Arthur Gallien, Executive Director of the Winona Housing & Redevelopment Authority. I inquired, "When is the next meeting of the Winona Housing & Redevelopment Authority?" He answered, "The next *regular* meeting is Nov. 17th." I asked, "When is the next *irregular* meeting?" He said, "Well, some of the members are getting together tonight." I asked, "Are they meeting at the Chamber of Commerce?" He replied, "Yes, but it

isn't really a meeting at all." I asked, "What members are going to attend?" He said, "I don't know."

I next tried phoning the Secretary of the Winona Planning Commission. However, I didn't reach him until about 5:00 p.m. He stated that he did not know of any meeting. (However, he did attend.)

Because the amorphic assemblage was to convoke at the Chamber of Commerce Building, I inquired in person of its President, Mr. Arnold Stoa, regarding the nature of the meeting. I explained in some detail why my civil rights as a citizen would be infringed if I should be excluded from a meeting of a public body, wherever held. I explained that Mr. Donald E. Stone, the Chamber Manager, had denied me the right to attend a prior and secret City Council Meeting held at the Chamber Building. This was, of course, a violation of my civil rights by the Chamber and its membership.

I insisted to Mr. Stoa that if the meeting was to be attended by a public body that I would expect admittance. Unlike the public servants from whom I sought information, Mr. Stoa afforded me the courtesy of a definite and unequivocal answer.

In due course he phoned me and said, "You will NOT be admitted!"

I thereupon made a formal written demand upon Arthur Gallien, as Executive Director of the WHRA, for the admission of all citizens to the meeting of that Authority.

When I entered the Chamber of Commerce Building at 7:30 p.m. the Chamber policy appeared to have been reversed.

I was not barred from entering. However, before proceeding to the meeting room, I was subjected to an inquisition by Mr. Stone, City Attorney Robertson, and Council President Harold Briesath. It appeared that my attendance was to depend upon three conditions, as follows, to-wit:

1. Was my attitude "correct"?
2. I would not be allowed to speak at the meeting.
3. Would I agree that I was there to attend a meeting of the Parking Committee of the Chamber of Commerce as the Chamber's guest, rather than a meeting of WHRA or any other public body?

These three conditions were disposed of as follows:

The 1st—Council President Briesath and City Attorney Robertson joined in one more of their vicious verbal attacks upon me, carping and complaining as usual about my "attitude" toward the City Council. Both insinuated that if my viewpoint diverged from that of the Chamber of Commerce that such "attitude" was improper. The Chamber's Manager, Mr. Stone, joined in this caustic assault upon my "attitude," insisting that I somehow join in the phantasy that no WHRA meeting was in fact to be held, even though its full membership was to be present.

I felt that the City Attorney was urging me to accept his formal written opinion regarding public meetings, which even the City Council has declined to follow.

Although it may be the function of Mr. Stone to brainwash the membership of the Chamber of Commerce, he has no such authority over the citizenry of Winona.

However, I apparently passed the "attitude" test.

The 2nd—I stated that I would not speak.

The 3rd—I unequivocally rejected the third condition.

A 4th indignity was Mr. Stone's statement that his time was valuable, but that mine appeared not to be.

It may be that Mr. Stone and Chamber of Commerce President, Arnold Stoa, do not understand that the legal rights of citizens are not dependent upon Chamber of Commerce membership.

I had spent most of the time from 1:40 p.m. trying to learn from City officials whether or not a meeting of a public

body was scheduled. *No one knew.* YET, ALL MEMBERS OF THE WINONA HOUSING & REDEVELOPMENT AUTHORITY, AND ALL MEMBERS OF THE CITY COUNCIL WERE IN ATTENDANCE. Had I inquired of Brezhnev concerning Kruschev's future, I should have been better informed than I was about this secret meeting of two public bodies, after exhausting all official sources of information.

I understand that Alderman Clarence Tribell attended reluctantly because he is opposed to secret meetings, and meetings away from the Municipal Building.

The meeting was conducted by Mr. Joe Krier, Vice-chairman of the Winona Housing & Redevelopment Authority. I was not fingerprinted, but Mr. Krier queried, "Who do you represent?" I replied that I represented myself as a citizen and taxpayer.

The fiction that this convocation did not constitute a meeting of the Winona Housing & Redevelopment Authority and of the Winona City Council was glaringly obvious. How anyone associated with any of the public bodies and civic groups in attendance, or any person learned in the law, would have the effrontery to pretend otherwise is wholly beyond understanding. Such fictions, of course, are commonplace behind the Iron Curtain.

When federally financed urban renewal was first recommended for Winona, I was concerned lest individual rights be compromised. My experiences, in my endeavor to exercise the most elementary right of a citizen in regard to public meetings, have served to confirm my darkest fears.

It should shock all of you that the City Attorney interrogated me about my "attitude." It did not surprise me, however. I had already been slandered, abused and vilified at City Council Meetings. I have been ordered out of such meetings, and threatened with arrest. Council President

Briesath has repeatedly berated me in a menacing and threatening manner, while Mayor Rudy Ellings has challenged me to an alley fight. Councilwoman Muriel Ollom has falsely accused me of interfering with the Council's work, while the City Attorney has baited me.

Although Alderman Tribell has spoken out against such treatment, I have found it necessary to report the more vicious attacks in letters on file in the offices of the City Recorder, the Chief of Police and the Attorney General. I have also made written complaint of similar treatment by Mr. Joe Krier during my attendance at a WHRA meeting.

I have repeatedly found it necessary to quote to the City Council Minnesota Statutes Annotated Sec. 471.705 which requires that all meetings of public bodies shall be open to the public. The statute merely recites a truism. Almost as often as I cite the statute, City Council President Briesath and City Attorney Robertson have joined in shouting, "We don't want to hear about the statute."

By a most remarkable coincidence, although all of the newsgathering media of Winona have knowledge of such outrages against a citizen, they have omitted to report them to the people.

The meetings of Winona Housing and Redevelopment Authority are held once a month at 1:10 P.M. on Tuesday, when citizens are necessarily at work. They are held in a small cubicle-sized roomlet, in a private building, the Winona National & Savings Bank. A citizen who has the audacity to squeeze into this meeting can expect to be as grossly abused as he would be at a City Council Meeting. He can expect, for example, that Mr. Joe Krier, the Vice-chairman of this public body, which chooses to function as an oligarchy, will inquire:

"What are you doing here?"

"Why aren't you at your office?"

He can anticipate that Mr. Krier will slander him, and make insulting remarks about a member of his family and about his professional competence.

I know that such treatment can be expected because I have experienced these unbelievable abuses when I have exercised my elementary right to attend "public" meetings of WHRA.

The seeming necessity for the "correct attitude" and monolithic thinking, which is so fundamental to a police state, is indeed a strange epidemic in this little city, which can boast of three colleges. Is it possible that the bulldozer psychology, which accompanies federal funds, has made individual thinking a crime here in Winona? Are City Planners, Regional Federal Directors, and Chamber of Commerce Managers to be the arbiters of our personal thoughts? Has "1984" reached Winona 20 years early?

It should shock all of you that a private citizen's right to attend a joint meeting of two public bodies should be conditioned upon his observing silence. It did not surprise me. A GAG RULE has been discriminatorily applied against me by the City Council when I have sought to question the monolithic viewpoint on Federal Urban Renewal. Mr. N. J. Fischer has suggested the same GAG RULE for the WHRA of which he is a member.

Why are the City Council, the WHRA, and the Chamber of Commerce so fearful of hearing another viewpoint regarding federalized urban renewal? Can't the program pass the test of free, open, public inquiry?

The City Council should never seek to evade the rights of the citizens by holding secret meetings. There can be no excuse for the City Council to leave its proper meeting place provided by the taxpayers in the Municipal Building to hold its meetings elsewhere.

Does any citizen of Winona have to be reminded that se-

cret meetings mean destruction of representative government?

Chamber of Commerce members are not privileged citizens. Nor should they be the invisible city government. The Chamber ought not seek to hold a docile Council as its captive audience, walling out the public. Instead, the Chamber's proposals should be presented at regular, open, public Council meetings at the Municipal Building, like those of anyone else. While the Million Dollar Parking Proposal is indeed the Chamber's idea, all of the taxpayers of Winona will pay the bill.

The City Council should repudiate the unbelievable suggestion in Mr. Stone's question to me last Monday evening, "Would you insist on attending this meeting if it were held in my home?"

At the City Council meeting on Monday, Nov. 16, unless prevented by GAG RULE, I shall demand that the abuse of citizens who attend public meetings cease at once. Such abuse has reached a point just short of physical violence. I shall urge that the practice in regard to the reading of communications be made uniform. This will abrogate the present policy of suppressing "anti-party" communications. I shall ask that citizens be informed of ALL meetings of ALL public bodies BEFORE they are held. (Because the news media appear to be unaware of much of the activity of public bodies, they too ought to be notified in advance.)

Because other public and civic bodies were represented at the captive meeting of the City Council and WHRA on Monday, Nov. 9th, and because of the official concern over my "attitude," I am letting them have copies of this communication.

Sincerely,

MARTIN A. BEATTY

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 13 -1970
JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1969

No. 1374

MARTIN A. BEATTY,

Petitioner,

vs.

RANDOLPH K. ELLINGS, CITY OF WINONA, HOUSING AND REDEVELOPMENT AUTHORITY OF WINONA, GEORGE M. ROBERTSON, JR., JAMES BRONK, MARLOWE BROWN, JAMES McCABE, HAROLD BRIESATH, DANIEL BAMBENEK, HENRY V. PARKS, MURIEL OLLOM, JIM D. MOHAN, HAROLD THIEWES, JAMES V. STOLTMAN, NEIL SAWYER, BARRY NELSON, DAVID L. JOHNSTON, DONALD KLAGGE, JERRY BORZYSKOWSKI, ALLYN S. MORGAN, JR., L. W. GOLDBERG, N. J. FISCHER, JOSEPH E. KRIER, WM. J. THUROW, FRANK CUNNINGHAM, WM. O. FINKELNBURG, E. J. SIEVERS, PHILIP BAUMANN, JAMES T. SCHAIN, NORMAN E. INDALL, WM. F. WHITE, JAMES FOSTER, JERRY PAPENFUSS, FRANK G. MERTES, DONALD GRAY, HOWARD KELLER, REPUBLICAN HERALD PUBLISHING COMPANY, JAMES B. GOETZ, RADIO STATION KAGE, GEM RADIO STATIONS CO., JAMES B. GOETZ, MERLIN J. MEYTHALER and REX N. EYLER, co-partners, doing business as WINONA BROADCASTING CO., KWNO BROADCASTING CO., CHAMBER OF COMMERCE OF WINONA, DONALD STONE, and ARNOLD STOA,

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF PURSUANT TO U.S. SUPREME COURT RULE 24, SUBSEC. 5 & 4.

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PETITIONER'S SUPPLEMENTAL BRIEF PURSUANT TO U. S. SUPREME COURT RULE 24, SUBSEC. 5, & 4.

ARGUMENT

1. Right of a Citizen to attend all meetings of the local public body.

Respondents while chiding petitioner for framing "His Own Definition of What a Public Meeting Is," have cited no case discussing U. S. Constitutional Amendments I, V, IX or XIV as they relate to the asserted right of the people to attend the meetings of the local public bodies.

The five state court decisions respondents cite (R.4) interpret state statutes. In Acord v. Booth (1908) 33 Utah 279, 93 P 734 the Citizen plaintiff who was removed by a marshal from a "committee of the whole," recovered nominal damages for humiliation and for being deprived of his right to attend. The holding in Turk v. Richard, 47 So.2d 543 (Fla. 1950) has been explained in Times Publishing Company v. Williams,

222 So.2d 470 (Fla. 1969) and in Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, (Fla. 1969), following the subsequent enactment of Florida's "Government in the Sunshine Law." Both of the 1969 decisions ruled against secret executive sessions. In the later case the Florida Supreme Court enjoined (p. 700)

> "any meeting or conference session * * at which are held any discussions on matters pertaining to the duties and responsibilities of the Board * *."

As distinguished in petitioner's Reply Brief before the Minnesota Supreme Court, Beacon Journal Pub. Co. v. Akron, 3 Ohio St.2d 191, 209 NE2d 399 was concerned primarily with the origin of the powers of the different public bodies. In Barnes v. City of New Haven,140 Conn.8, 98 A2d 523 "the fundamental question

for decision" as stated at p. 527 was "whether the parking project is a legitimate public purpose." There no one was prevented from attending any meeting, and it appears doubtful that the cause was a truly adversary proceeding. Alphen v. Shadman, 330 Mass 60, 116 NE2d 252 was about money, a commission, not about civil rights.

Whether by premising a Citizen's right to attend all of the meetings of the local public bodies upon sections of the federal Bill of Rights constitutes the novel approach to the problem that respondents suggest, is immaterial. Petitioner's position is merely an application of the so-called "Right to Know," espoused by James Madison, and other authorities following:

Thayer, Legal Control of the Press, 1956, 3rd ed., The Foundation Press, Sec. 30:

"The right to report is of course dependent upon the ability to gather news. Obviously, the United States Constitution does not give one the specific right to collect news, however, there is no prohibition; the several state constitutions give no more than the freedom to speak and write what one pleases; the right to gather and report news, so vital to the press, is granted inferentially. Legally, the rights not granted to the Federal Government are reserved to the states or to the people, and so the right to gather news remains with the people." Gillmor and Barron, Mass Communication, 1969, West Pub. Co., Ch. V, Sec. 1, p. 453:

"In a preceding section the point was made that government like the privately owned media had an obligation to provide a structure for dialogue in the continually increasing sector of national life which is under government control. Such a goal relates to what is sometimes called the people's right to know. . . .

"Recently Sec. 3 of the Administrative Procedure Act of 1946, 5 U.S.C.A., Sec. 1002 was amended and the Freedom of Information Act, 5 U.S.C.A. Sec. 522 (1967), was enacted. Here the focus is not on access for opinion but on access for information. The latter, like the former, may someday be predicated on a positive constitutional duty of government." (Emphasis added).

Schuller, Problems of Law in Journalism, 1955, The Macmillan Co., Chpt. III

Freedom to Gather News ⊂ p. 77:

"The freedom to publish news and comment is of little value without the corollary freedom to gather the news."

Siebert, The Rights and Privileges of the Press, 1934, D. Appleton-Century Co., Inc.:

(Under his classification of municipalities) "where there is neither statutory nor charter provision requiring the council to conduct its meetings in public,"

the author states at p. 66:

"The point has never been adjudicated in the United States, * *."

"If the point comes up for decision in the courts of the United States, consideration will probably be taken of the peculiar character of a municipal corporation as compared with other governmental units. The corporation is composed of the corporate electors who have a right to be informed of the activities of the elected representatives."

Siebert comments upon the municipal governmental unit ⊂ p. 64, as follows:

"The organization and operation of the municipal unit is probably the most complicated problem of modern government. The entire public participated in the original town meeting, but in large metropolitan cities the government must be carried on through delegated authorities. In these centers the Press serves as the sole medium of publicity. ⊂ p. 65 - The procedure of city councils differs from that of other

legislative bodies chiefly in the degree to which they admit participation by persons not members of the council.

See also Pierson v. Ray (#79) and Ray v. Pierson (#94) 386 U.S. 547, 87 SCt. 1213, 18 L.Ed 2d 288, re: conspiracy to deprive one of civil rights.

That, as noted by respondents, the Minnesota Supreme Court thought little concerning the U. S. Constitutional basis of Citizens' rights, is regrettable. It is particularly so in this new era of awareness of individual constitutional rights.

In the case at bar, with no unlawful conduct by petitioner, the clean civil rights issue should have been considered by the Minnesota Courts. Here the jury plea of Andrew Hamilton is germane.

"But to conclude; the question before the court and you, gentlemen of the jury, is not of small private concern, it is not the cause of a poor printer, nor of New York alone, which you are now trying; no! it may, in its consequences, affect every freeman that lives under a British government on the main of America.

> It is the best cause; it is the cause of liberty; * * the liberty both of exposing and opposing arbitrary power * *, by speaking and writing the truth." (Trial of John Peter Zenger, 1753, 16 American State Trials, 17 et seq.)

Boyd v. United States, 116 U.S. 616, 635, 6 SCt. 524, 29 Led 746, 752:

> "* * unconstitutional practices get their first footing * * by silent approaches and slight deviations from legal modes of procedure. * * It is the duty of the courts to be watchful for the rights of the citizen, and against the stealthy encroachments thereon."

The Citizens too must challenge the invasion of their civil rights.

> "For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while there was time." Dissenting opinion of Justice Sutherland in The Associated Press v. National Labor Relations Board, (1937) 301 U.S. 10*; 57 SCt 650; 81 Led 953, 965.

James Madison's observations would seem to be as pertinent to the local public bodies as to the state and national bodies.

"A popular government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy; or perhaps, both!" (9 Writings of James Madison 103, Hunt Ed. 1910, letter to W. T. Barry, Aug. 4, 1822).

* * *

Open Meeting Statutes, The Press Fights for the Right to Know, 75 Harvard LR. 1199, 1200:

"The people must be able to go beyond and behind the decisions reached and be appraised of the pros and cons involved if they are to make sound judgments on questions of [1201] policy and to select their representatives intelligently. The presence of outside observers is an invaluable aid in making such information available, for official reports, even if issued, will seldom furnish a complete summary of the discussion leading to a particular course of action.

Times Publishing Co. v. Williams, supra, (Fla. 1969) 222 So.2d 470, 473:

"* *. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest. * *."

(p. 699)

"The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength

to our country. During past years tendencies toward secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with 'hanky panky' in the minds of public spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in government agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made."

2. Right of a Citizen to see the letters, papers and documents of the local public bodies.

Respondents contend this issue is not raised in the pleadings, and not considered by the state Courts.

Petitioner omitted to specifically quote Complaint par. 24, which alleges:

"24. That in furtherance of such plan such public bodies have been conducted in such manner that from time to time plaintiff has been wrongfully denied access to public information, reports and writings, and his com-

munications to such bodies have been disposed of irregularly."

However, the Petition notes that an alleged right to see the letters, papers and documents is included within Complaint par. 10 among the "lawful rights and privileges as a citizen, * *."

Said Par. 24 was specifically denied in the Separate Answer of Randolph K. Ellings and others, and was denied by a general denial in the Separate Answer of WHRA and other defendants.

In the first section of his Brief in the Minnesota Supreme Court petitioner specified the alleged right as follows:

"I. The rights and privileges of a citizen of Minnesota include: * *

1. * *.

2. a freedom of access to public information, * *."

Petitioner then cited U. S. Constitutional Amendments IX and X as well as Constitu-

tional and statutory provisions and case law of Minnesota.

Respondents have never refuted petitioner's evidence that public information was denied him. Some illustrations of such withheld documents are mentioned in the Petition at p. 9.

Also illustrative are the letters dated 7/27/65 and 8/4/65 noted in respondents' appendix (A.28).

Petitioner's letter to WHRA demonstrates that by the device, (clearly evasive, and likely conspiratorial) of directing the Citizen to the private planning firm, which owes no duty to the Citizen, the public body successfully denied to the Citizen the public's information. Paraphrased, the letter of 8/4/65 reads:

> "At a meeting of the * * (WHRA) on the evening of July 20, 1965 I made a request for a copy of a preliminary draft of a downtown general neighborhood renewal plan

presented that evening by Mr. Chapman. Copies thereof were handed to members of the Authority that evening. I made my request as a citizen and taxpayer.

"* *.

"* *. (WHRA member) Mr. Morgan stated my demand would be referred to the Attorney for the Authority.

"I received a communication from Mr. C. Stanley McMahon Esq. dated July 27, 1965. He stated in part as follows: 'This draft * * is the property of Nason, Law, Wehrman and Knight, Inc. (a private planning firm) and if, for some reason, you wish copies of their materials, the request should be addressed to them, attention Mr. Chapman.'

"I have made my demand to the Authority. I hereby renew that demand, and I respectfully decline the suggestion that I seek the preliminary plan elsewhere." (Parenthetical phrases added). (Paulson deposition p. 94, 95)(7).

Although most of the determinations concerning access to records are found in state court decisions, it was held in Providence Journal v. McCoy, 94 F Supp

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Ft. Nt. #7- Petitioner's correspondence in 7 manila envelopes marked Defendants' Exhibits 8 through 14 was copied and filed with the deposition of petitioner. The individual letters were not separately numbered as Exhibits.

186, 90 F2d 760, cert. den. 342 U.S. 894; 72 SCt. 200, 96 LEd. 119, that a Pawtucket ordinance prohibiting any official to make public the records of tax abatement violated the equal protection clause of the 14th Amendment.

3. Public Figure.

In discussing "public figure" respondents point out that plaintiff was a practicing attorney in a small city.

But attorneys are people too, and like doctors, teachers and candlestick makers, they value their reputations. It is suggested that one's trade or profession provides neither a valid nor fair criterion for branding one a "public figure."

Respondents affirm that the term "public figure" should be viewed in the context of the area concerned. This consideration immediately renders immaterial

petitioner's correspondence with state and federal officials. It also favors the critic of national policy over the critic of the village council, for the latter earns the title instantly.

It is suggested that neither the private and innocuous activity of clipping news stories, nor attending meetings of public bodies, properly qualify one for the mantle of "public figure."

In citing the motion for change of venue as indicating that petitioner is a "public figure" respondents ignore the fact that the reasons supporting the motion were principally the asserted wrongs of respondents including: (1) the alleged conspiracy to "publicly vilify and discredit plaintiff by word and deed," (Complaint par. 10c and d), (which included an editorial campaign) and to "thereby ruin the plaintiff's reputation as an attorney and as a citizen," and

(2) the subsequent and unprecedented publication of selected portions of the pretrial oral deposition of petitioner by the respondent newspaper. Over neither of these circumstances had the petitioner any control. Over neither such vilifications nor over his trial by newspaper, had the petitioner any control.

Does a motion for change of venue distinguish a defamation suit plaintiff as a "public figure"? At least this concept permits a choice. The plaintiff can elect between a dismissal or a biased jury.

But respondents' next proposal insures dismissal!

Seemingly less than convinced themselves that the evidence casts petitioner as a "public figure," respondents in all seriousness submit:

> "that even without any evidence, the mere fact that petitioner has commenced two lawsuits against numerous * * prominent figures * * in the community, including the mayor, councilmen, and members of the Housing and Redevelopment Authority, * * would require a holding as a matter of law that he was a public figure * *." (Res. Br.8).

Ergo! The perfect defense for public officials; - - as well as the end of defamation suits against them.

Actually respondents propose that by commencing only one lawsuit the plaintiff becomes a "public figure," for it is unlikely that they mean that the defamation suit itself insures the plaintiff's defeat. Or do they mean it?

Fortunately for this petitioner and other plaintiffs, respondents cite no legal authority for their absolutist position.

The more respondents strain to manufacture a defense upon the issue of "public figure" the more they lose sight

of the essence of the Sullivan doctrine, as stated at 11 Led 2d 708:

> "Madison said * * the 'censorial power is in the people over the government, and not in the government over the people.'"

It is further contended by respondents that, other considerations aside, petitioner became a "public figure" by his letter of 11/4/64. (Resp. A-69), (Petition 10).

The letter recited the difficulty that Petitioner encountered in seeking out the meeting and in attending it. As stated therein:

> "I explained that Mr. Donald E. Stone, the Chamber Manager, had denied me the right to attend a prior and secret City Council Meeting held at the Chamber Building." (Resp. A-70).

To the end that those truly responsible might know that, as therein stated,

> "this was of course a violation of my civil rights by the Chamber and its membership," (Resp. A-70),

copies were sent to "all Winona resi-

dent members of the Winona Chamber of Commerce." (Carney, Reporter, deposition 20), (See Opinion, Petition,A-5). Having encountered a skein of evasion by the public officials and Chamber officials about the meeting, petitioner could anticipate an evasion of responsibility by the Chamber Members for the acts of their officers, or even a lack of knowledge thereof; and surely no change in policy, until apprized in writing of their individual and collective responsibility.

Having pointed out in the letter that the "abuse has reached a point just short of violence," (Resp. Br. A-75) petitioner also sent copies to "the other public and civic bodies (that) were represented at the captive meeting." (Resp. Br.A-75).

If a Citizen is to be branded a "public figure" and be thereby made

fair game for libel and slander by the public officials and the news media because he confronts, with a signed letter, the individuals directly responsible for the interferences with his civil rights; then indeed the Citizen has been put into a box. The Citizen is thereby punished for the acts of those who defame him.

Respondents' contention that if "petioner were not a public figure" before the 11/14/64 letter "he certainly was after" (Res.7) overlooks the fact that two alleged defamations had already occurred, that of respondents Mayor Ellings on about 6/15/64 (Complaint par. 20) and Joseph E. Krier on 7/21/64, (Complaint pars. 16 and 21).

Respondents are left then with the two bare facts. First, that some of plaintiff's lawful questions of and statements to the public bodies were reported by the news media. Over this circumstance

petitioner had no control; and it does not provide a fair criterion where the Citizen sought to lawfully oppose the taking of his building. Secondly, the "vortex" concept would appear to be even less definitive under such circumstances.

4. Inaccuracies in respondents' Appendices require clarification.

Asserting that despite the fact that "petitioner's statement of the case covers 18 pages," it is inadequate, (Res.Br.1), respondents have attached to their Brief a "Summary of Beatty Correspondence" as Appendix B, and a "Summary of Beatty Depositions" as Appendix C.

In some instances the condensation of the material has left a record which is not accurate. For brevity, only two examples will be set forth.

Respondents' summary (Res.A-32) of the letter of 3/3/66 to City Council

reads:

> "Asking that the minutes be amended to show the problem of leasing the City's Marina and the question of a referendum were discussed, although no action was taken thereon."

This letter, a respondents' exhibit, is attached to this Supplementary Brief as Appendix C.

Respondents' summary states:

(87)-He (petitioner) has not gone to a psychiatrist since 1964. (Resp.A-65).

Since about the time of the signing of the transcript of the oral deposition on about 4/6/67 respondents have known that petitioner has "never gone to a psychiatrist." (Carney Deposition 87, line 9). (Emphasis added).

Yet, as shown in the Reply Brief before the Minnesota Supreme Court, at pages 38-40, respondents have repeatedly foisted upon the Judges of the Minnesota Courts, and now upon the highest Court, a diametrically opposite and false im-

pression with the quote: "He has not gone to a psychiatrist since 1964."

Such distortions amount to a presentation of new non-facts not found in the evidence.

In petitioner's view the summaries are not helpful in either an understanding of the facts, nor in the isolation of the federal questions.

Respectfully submitted,

Martin A. Beatty

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APPENDIX C
(For Appendices A and B see Petition)

March 3, 1966

President and Members
of the Winona City Council
Winona, Minn.

Sirs:

As a resident and taxpayer I wish to point out certain important omissions in the minutes of the Special Council Meeting held on January 31, 1966.

In the minutes as approved at a Council Meeting held on Feb. 7, 1966 there is no mention of two matters which were discussed at great length. These matters were as follows:

1. The problem of leasing the City's Marina in the event that the present lessee, Mr. Jack Zywicki, does not continue as a lessee thereof, and
2. The problem of the failure of the City of Winona to be prepared to hold a referendum on Feb. 7, 1966 on the question: "Do you want federal aid for urban renewal?"

The grossly peculiar circumstances of the 3-part Council Meeting of Jan. 31, 1966 were as follows:

At 7:37 P.M. the City Council met in Special Session in the Court Room in the City Building. Aldermen Harold Briesath, David L. Johnston, also known as Dave Jaye, Neil Sawyer, Donald Klagge, James Stoltman, Jerry Borzyskowski, and Barry Nelson were present. Aldermen

Thiewes and Parks were absent. The announced purpose of the meeting was to discuss the Urban Renewal Plan for Winona with members of the Housing and Redevelopment Authority.

Council President Briesath presided. Several members of the public were in attendance as well as 3 representatives of the news media.

The meeting was turned over to Dr. Wm. Finkelnburg, Chairman of WHRA, and to C. Stanley McMahon, the Attorney for WHRA. These men discussed the progress of the urban renewal plans. Both men dwelt on the probability of securing so-called "non-cash credits" computed upon the basis of construction work that has been completed at Winona State College. This "Act I" of the 3-part Council Meeting was in itself amazing, for the WHRA delegation not only arrived with answers for the Council Members, but they provided the questions as well! Dr. Finkelnburg characterized the urban renewal plan as the City's "wishbook"; he likened the non-cash credits to "a pot full of green stamps", and also as "our little goodies" which Winona can secure "by legal hocus pocus". Mr. McMahon on his part complained that "there has been more heat than light" shed upon the urban renewal question. Attorney McMahon diagnosed the city's core area as "stricken with coronary disease needing treatment".

(p.2.)

At about 8:40 Ald. Stoltman moved for adjournment, Ald. Johnston 2nded, motion carried, all voting aye. Members of the public left, except myself.

The 3 press representatives also left.

Then the astonishing preliminaries for "Act II" of the Council Meeting were put in motion. The Council members stood around; there was putting on of wraps and other departure activity, including going down the stairs by some Aldermen, presumably to leave the building. After about 15 or more minutes the Council Members returned to the Court Room, saying they would have a "Committee meeting", altho the returning group consisted of all 7 Council Members who had participated in "Act I" of the evening's fantastic performance.

"Act II" of the Council Meeting dealt with the municipal marina and the Council's difficulties with Mr. Zywicki. Ald. Neil Sawyer stated, "Mr. Zywicki owns a lot of property in town. When his tenants don't pay their rent, they get put out." Some Council Members favored having a Mr. Dick Kanz for a new operator. It is not known when this public business was discussed or developed, or where. There was no indication that members of the public would have opportunity to apply for the lease, should it become available, or that it would be let on open bids. Thus ended "Act II". KAGE Reporter Wayne Valentine returned for part of this discussion.

The preliminaries to "Act III" were almost the same as those preceding "Act II". There was no motion for adjournment at the conclusion of "Act II". For "Act III" two aldermen entered the Court Room wearing their outer wraps, and there removed them. They went through the same phantasy of calling it

a"committee meeting", altho again it was the same 7 Council Members who returned for the concluding act.

This third part of the Council Meeting dealt with efforts to have a meeting of minds, and present a united front at the Council Meeting to be held on Mon. Feb. 7, 1966 to deny to the Voters of the City the referendum on renewal. The Voters had been promised the Referendum in March, 1965. Ald. Briesath held out for standing behind the Attorney General's opinion which, he stated, holds that the referendum could not be held. "Act III" ended shortly before 10:00 P.M.

To my mind, this bizzare performance is further evidence of the determined, deliberate, calculated effort of the 7 Members then present to deal with the public business in secret, instead of in open meeting as required by law.

I hereby request that this account of the Council Meeting of Jan. 31, 1966 be incorporated into the present incomplete minutes of same.

Martin A. Beatty

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 10 1970
JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1969

No. 1374

MARTIN A. BEATTY,

Petitioner,

vs.

RANDOLPH K. ELLINGS, CITY OF WINONA, HOUSING AND REDEVELOPMENT AUTHORITY OF WINONA, GEORGE M. ROBERTSON, JR., JAMES BRONK, MARLOWE BROWN, JAMES McCABE, HAROLD BRIESATH, DANIEL BAMBENEK, HENRY V. PARKS, MURIEL OLLOM, JIM D. MOHAN, HAROLD THIEWES, JAMES V. STOLTMAN, NEIL SAWYER, BARRY NELSON, DAVID L. JOHNSTON, DONALD KLAGGE, JERRY BORZYSKOWSKI, ALLYN S. MORGAN, JR., L. W. GOLDBERG, N. J. FISCHER, JOSEPH E. KRIER, WM. J. THUROW, FRANK CUNNINGHAM, WM. O. FINKELNBURG, E. J. SIEVERS, PHILIP BAUMANN, JAMES T. SCHAIN, NORMAN E. INDALL, WM. F. WHITE, JAMES FOSTER, JERRY PAPENFUSS, FRANK G. MERTES, DONALD GRAY, HOWARD KELLER, REPUBLICAN HERALD PUBLISHING COMPANY, JAMES B. GOETZ, RADIO STATION KAGE, GEM RADIO STATIONS CO., JAMES B. GOETZ, MERLIN J. MEYTHALER and REX N. EYLER, co-partners, doing business as WINONA BROADCASTING CO., KWNO BROADCASTING CO., CHAMBER OF COMMERCE OF WINONA, DONALD STONE, and ARNOLD STOA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR REHEARING

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In The

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RANDOLPH K. ELLINGS, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on May 18, 1970, and (2) granting the petition. As grounds for this motion petitioner states as follows:

I.

The federal question of "public figure" affords reasons why review should be granted as hereinafter listed.

a. On the authority of *Pickett v. Union Terminal Co.*, 313 U.S. 591, 314 U.S. 704, 315 U.S. 386, 394, and *Forgett v. United States*, 383 U.S. 926, 390 U.S. 203, because of the

fact that the same or related issue or issues are before the Court in the following cases pending, to-wit:

Rosenbloom v. Metromedia, #947. Review granted.
Monitor Patriot Co. v. Roy, #891. Review granted.
Time Inc. v. Pape, #1309. Review granted.
Osceola Star Banner v. Damron, #1373. Review granted.

Let us consider initially the first three cases already chosen for review. The contrasting situations of a non-"public figure" in *Rosenbloom*, a candidate for U. S. Senator in *Monitor Patriot Co.*, and a ranking police officer in *Time Inc. v. Pape* are before the Court in regard to the proper application of the *New York Times Co. v. Sullivan* rule.

While these cases present conflicting applications of the rule in two state court and two federal court cases, none of the three present to the Court the opportunity to draw the line between a "public figure" and a non-"public figure." See petitioner's Supplemental Brief, pages 13 through 20, demonstrating the invalidity of the grounds advanced to support the "public figure" label. The case at bar squarely presents this issue, petitioner having consistently insisted that he is not a "public figure." Consequently the case at bar in this respect presents an issue both of more importance to the public at large and more complex than the three cases combined. Unlike the three cases, the case at bar was never considered by a jury, being determined by Summary Judgment; and petitioner was held to be, improperly he contends, a "public figure" as a matter of law.

Even for these very limited reasons the denial of certiorari should be reconsidered so that this case may be argued along with *Rosenbloom*, *Monitor Patriot Co.*, and *Times Inc. v. Pape*.

Also of importance to the public at large, and the Courts, are questions regarding the application of the Sullivan Rule

when the alleged defamations are by public officials at meetings of the public bodies; and also alleged defamatory publications by news media allegedly aligned conspiratorially with the public officials. All of these problems are to be found in the case at bar, but not in the pending cases referred to above.

b. The intervening and controlling Supreme Court decision of *Greenbelt Cooperative Publishing Co. v. Breseler* requires a rehearing of the case at bar, on the authority of *Zap v. United States,* 330 U.S. 800, and *Bradley Mining Co. v. Boice,* 345 U.S. 932.

The case concerns the publications in the local press, apparently as news, the charge of "blackmailer" levelled by members of the audience at two City Council meetings. It was conceded by his counsel that Mr. Breseler, a State Senator, at whom the remark was directed, was a "public figure." The Court found the word to be "no more than hyperbole, a vigorous epithet."

The circumstances of the case are in sharp contrast to the case at bar where the Chairman of the local Housing Authority, also a respondent, publicly read the alleged libel at a Housing Authority meeting. It was a prepared, sixteen paragraph typed statement naming petitioner exclusively and eleven times. It was published by respondent newspaper company, and other media, the day following. (Ex. B to Separate Answer of Respondent Housing and Redevelopment Authority. See Appellant's Brief and Appendix before Minn. Supreme Court, A-25.)

The respondent newspaper company had been forewarned of the advisability of avoiding libelous publications about petitioner by a demand for retraction of a prior alleged libel. (Complaint, par. 18, Appellant's Brief and Appendix before Minn. Supreme Court, A-8.)

The spontaneity of the alleged slanderous word "blackmailer" in *Greenbelt* is in contrast with the pre-planned and type statement in the case at bar. The area of contrast ought to be examined by the Court.

Another point of contrast is that in *Greenbelt* the individual name-caller was not sued; while in the case at bar both the public official, the alleged libeller, (see *Sorenson v. Wood*, 123 Neb. 348, 243 N.W. 82), and the newspaper company were sued. The question arises: Are the public officials also enveloped within the protection of the press freedom cloak? By its decision in the case at bar the Minnesota Court has, in effect, applied the Sullivan Rule to public officials also in regard to both premeditated and spontaneous allegedly defamatory remarks.

Also Breseler, who was called "blackmailer," was before the City Council "again seeking such favors," as the Court puts it, in the form of zoning variances. Conversely, in the case at bar, the petitioner's appearances at the City Council meetings have been in the interest of preserving his fundamental rights.

II.

The need for the resolution of an asserted constitutional right of the Citizen in relation to the secret meetings of the local public bodies is the compelling reason for granting a rehearing.

More fundamental than the "public figure" and libel considerations, already set forth, are the reasons why the Court should hear the arguments for and against petitioner's position that the Citizen has a federal right, not dependent upon the common law, but protected by the federal Constitution, to attend all the meetings of the local public bodies, and particularly those held secretly such as "executive sessions."

Initially it should be stated that the judicial recognition

of a *people's* "right to know," apparently never adjudicated in this Court, will necessarily flow from the Court's consideration and resolution of this case.

This asserted right, although glimpsed by text writers, has been rather lost in the sometimes asserted "right of the *press* to know."

Even such asserted right of the press to know has caught but passing comment in the great mass of litigation concerning the right of the press to publish and comment.

It appears more practical to proceed inversely to demonstrate "the people's right to know," as follows:

(1) There is a right to gather news.

> "The right to report is of course dependent upon the ability to gather news. Obviously, the United States Constitution does not give one the specific right to collect news; however, there is no prohibition; * * * the right to gather and report news, so vital to the press, is granted inferentially." Thayer, *Legal Control of the Press*, 3rd Ed., The Foundation Press, Sec. 30, p. 178.
>
> "The freedom to publish news and comment is of little value without the corollary right to gather the news." Swindler, *Problems of Law in Journalism*, 1955, The MacMillan Co., Ch. III, p. 77.

(2) Freedom of the press belongs to the people.

> "Freedom of the press is a right which belongs to the public; it is not the private preserve of those who possess implements of publishing." *State v. Buchanan* (Or. 1968), 436 P.2d 729, Hd. nt. #2, cert. den. 88 S.Ct. 2055, 392 U.S. 905, 20 L.Ed.2d 1363. See also: *State ex rel. Pulitzer Pub. Co. v. Coleman* (1941), 152 S.W.2d 640, 370 Mo. 1239.

(3) It follows that freedom to gather facts belongs to the people.

> "Legally, the rights not granted to the Federal Government are reserved to the states or to the people, and so the right to gather news remains with the people."

Thayer, *Legal Control of the Press*, 1956, 3rd ed., The Foundation Press, Sec. 30, p. 178.

"Recently Sec. 3 of the Administrative Procedure Act of 1964, 5 U.S.C.A., Sec. 1002, was amended and The Freedom of Information Act, 5 U.S.C.A., Sec. 522 (1967), was enacted. Here the focus is not on access for opinion but on *access for information*. The latter, like the former, may someday be *predicated on a positive constitutional duty* of government." (Emphasis added.) Gillmor and Barron, *Mass Communication*, 1969, West Pub. Co., Ch. V, Sec. 1, p. 453.

Because this case turns upon the fundamental basis of freedom of speech, its determination affects all Citizens, and the states and local bodies as well. The following questions themselves demonstrate the compelling necessity why they should be answered by the Court, to-wit:

1. Is there a constitutional "right to know" retained in the people and guaranteed by constitutional amendments, and particularly Amendment IX?

2. Is a people's "right to know" a power reserved in the people by constitutional amendments, and particularly by Amendment X?

3. Is there instead a superior "power of secrecy from public scrutiny" of the public's business reserved by the several states for the municipal bodies by Amendment X?

4. Is the "people's right to know" unconstitutionally violated by the device of "executive sessions" or any other scheme whereby members of the local public bodies discuss in secret the public's business?

It would appear to be of no moment whether the right, assuming its existence, is protected by the 1st, 9th or 10th Amendments. (See: *Brecu v. Kahl, et al.*, 7 Cir., 419 F.2d 1034, 1036, cert. den. 6/2/70, 38 L.W. 3474.)

The present awareness of civil rights by the Courts, the legislatures, the people and the press demonstrate the time-

liness of a judicial consideration of these issues by our highest Court now. Florida's recently enacted "Government in the Sunshine Law," (Fla. Stats. Anno., Sec. 165.22), and similar statutes of some other states, demonstrate current legislative attempts to clarify a "people's right to know." The Freedom of Information Act, 5 U.S.C.A. Sec. 522 (1967), shows the same awareness by the Congress, as does the currently proposed "First Amendment Freedoms Act."

A Florida Court has recently exposed this raw nerve with these observations:

> "Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with 'hanky panky' in the minds of public spirited citizens. * * * these specified boards and commissions should not be allowed to deprive the public of this inalienable right to be present * * *." (*Board of Public Instruction of Broward Co. v. Doran*, 224 So.2d 693, 699 (Fla. 1969).)

There is current speculation, too, that by the Freedom of Information Act the Congress has sought to limit, rather than recognize, the "right to know" inherent in the people.

Today, when it is recognized that we move ever faster into regimentation, the definitive resolution of the people's rights cry for recognition.

The sad story of Black Americans is lesson enough that the individual states are not to be trusted to fairly resolve a conflict between the state's own delegated or reserved power and the constitutionally reserved rights of the citizen.

Finally, the Courts ought to foster the orderly judicial demarcation of citizens' inherent rights, where possible, BEFORE such issues reach the streets.

Fortuitously, the case at bar affords the present opportunity to determine whether the federal Constitution has reserved such a right as a limitation upon the power of the several states. Petitioner suggests that there is no single

issue of such elemental importance, both currently and permanently, in any other case now pending.

For the reasons set forth above, as well as those contained in the petition for writ of certiorari and petitioner's supplementary brief, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and, if the Court is so disposed, set the cause for argument in conjunction with one or more of the pending cases numbered #947, #891 and #1309; and further that the judgment and opinion below be reviewed.

Respectfully submitted,

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As petitioner, pro se, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

Petitioner, pro se